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Regulation Moves Upstream

Significance of Supreme Court Decision in New River Federal Power Case

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AFTER a two and one-half years' battle in Federal courts the widely discussed "New River" Case was brought to an end by the action of the Supreme Court of the United States in denying the petition of the Appalachian Electric Power Company for a writ of certiorari.

The importance of the issues raised in this suit[1] was evidenced by the widespread interest it aroused throughout the country. Leaders of the power industry and leaders of the bar mingled with representatives of the great news agencies to fill the court room at the various hearings. Officials of state governments watched the case. The President of the United States kept in close touch with it.

The action of the high court is being variously construed. Like the utterances of the ancient tribunal at Delphi, the court's action is being interpreted in accordance with the desires and hopes of those who are doing the interpreting. In the view of some the case settles matters of vital importance connected with the Federal control of the hydroelectric industry, including the constitutionality of that control. In the opinion of others the decision is a "dogfall," settling nothing of importance either to the government or to the industry. The latter view, it should be said,

[1] The official title of the case was: Appalachian Electric Power Co. *v.* George Otis Smith et al.

was not held by the Appalachian Electric Power Company, the plaintiff in the case.

WHAT is the significance of the New River litigation? A brief review of the history of the case and the principal issues involved will make clear its significance.

Congress in the Federal Water Power Act of 1920 asserted its authority over navigable waters of the United States, and also asserted jurisdiction over nonnavigable streams to the extent of providing that if any person or corporation files with the Federal Power Commission a declaration of its intention to build a hydroelectric project on streams of that character, and the Commission, after investigation, finds that the proposed construction will affect the interests of interstate or foreign commerce, the construction may not proceed without a license being obtained from the Commission. If a major project is involved, as in the "New River" Case, the license subjects the company to all of the regulatory and other provisions of the Federal Power statute and permits "recapture" by the United States, or a state, or municipality, at the end of the license period upon payment to the company of its net investment in the project not to exceed its fair value.

IT is important to note that in the event the Federal Power Commission should exercise rate-making authority, as under certain circumstances it might, the company's rates would be based upon net investment not to exceed fair value—which is, of course, a new departure in rate making and which became the object of vigorous attack in the "New River" Case.

On June 26, 1925, the predecessor of the Appalachian Electric Power Company filed a declaration of intention to construct a huge hydroelectric plant on New river near Radford, Virginia. About 150 miles below the proposed project the New river becomes the Kanawha, an admittedly navigable river. The commission, after the investigation required by the statute, found that the river in the part involved was nonnavigable, but that the interests of interstate or foreign commerce would be affected by the project, and ordered the company not to proceed with its construction without first obtaining a license from the commission. This finding and order became the object of the attack in the subsequent litigation.

THE commission now tendered the company a "major license" which was refused. A "minor license" the company was willing to accept, since it involved merely the regulation of the reservoir releases for the protection of navigation below the project. If a "major license" were accepted, the United States, through the Federal Power Commission, would exercise regulatory authority over the securities, accounting, and, in certain circumstances, over the rates of the project. It would also acquire the right to "recapture" the plant at the end of the license period.

This measure of Federal control the Appalachian Electric Power Company emphatically did not want, and did not intend to submit to. It did not believe that the commission had any authority under the power stat-

ute to impose such regulation upon a power project on a nonnavigable stream. It did not think that Congress under the Constitution had any power to exercise such control over power projects on nonnavigable streams. It did not believe that Congress possessed the constitutional power to exercise such control even over power projects on navigable waters of the United States.

ON September 22, 1930, the Attorney General, at the request of the President of the United States, rendered an opinion holding that the commission might in its discretion issue a "minor license" to the Appalachian Electric Power Company. The company offered to accept a minor license, as has been stated, but the commission declined to grant it.

On April 3, 1931, the independent commission which had now succeeded the old commission composed of the Secretaries of War, Interior, and Agriculture, declined to reconsider the finding and order of its predecessor, and tendered to the company a major license. The company promptly filed suit in the United States District Court for the Western District of Virginia where lands and project were located.

The bill alleged that the commission's finding and order had placed a cloud on the title of the plaintiff's property on New river and asked that the order be set aside, and that the defendant commissioners be enjoined from taking any steps toward its enforcement. Neither the commission nor the United States being suable, the action was brought against the individuals who composed the commission. The state of Virginia now entered an appearance in the case as a friend of the court. The state supported the position of the company, charging that the commission's order and finding constituted an encroachment upon the rights of the state in contravention of the Tenth Amendment of the United States Constitution.

THE curtain rises upon the "New River" Case with Hon. Newton D. Baker, former Secretary of War, and the chief counsel for the plaintiff, disclaiming any purpose to assail the constitutionality of the Federal Water Power Act.

"We do not attack the constitutionality of the statute," he said. "We aim no sword at it."

He believed at the moment that the plaintiff's case could be safely rested upon the proposition that the commission in its action had misconstrued the power statute, and that the constitutional question could thereby

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be avoided in that particular case.

That hope of the company's counsel soon faded, however, and without abandoning his contention that the commission had exceeded its statutory authority, Mr. Baker opened up warfare on a new front, vigorously challenging the power of Congress to enact the Federal Water Power Act of 1920.

The "sword" now aimed at the Federal Power statute was formidable in the hand of an advocate of great ability and eloquence. The case against the constitutionality of this statute had been presented before, both in and outside of the courts, by lawyers of distinction; it had never been presented with more brilliancy or power.

THE assault on the constitutionality of the act proceeded along two lines:

1. That Congress had no constitutional power to require a Federal permit as a condition to the construction of a power project on a nonnavigable stream; and

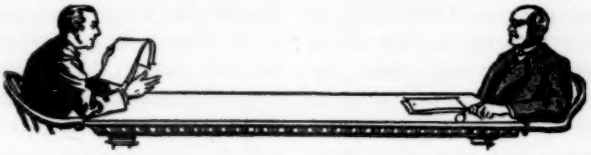
2. That Congress had no constitutional power to regulate the securities, accounting, rates, or services of power projects, whether located on nonnavigable or navigable streams, and had no constitutional power to provide for the "recapture" of such projects by the government at the end of the license period, and especially no authority to provide for their "recapture" upon payment of net investment as distinguished from "fair value."

Hon. Luther B. Way, the district judge, squarely faced the constitutional question. Answering the contention that the constitutional power of Congress over a nonnavigable stream is at most of a negative and purely prohibitive character, limited to restrictions similar to the protective restrictions found in the River and Harbor Acts for many years, the court said:

> I am inclined to think that is a too narrow view of the power of Congress to regulate the flow of a nonnavigable tributary which contributes so substantially as does New river, to the navigable capacity of Kanawha river. I rather think that it may fairly be concluded from the decisions of the Supreme Court above referred to that the flow of that stream is, under the facts disclosed, impressed with a public servitude or interest for the purpose of protecting, preserving, and even enlarging the navigable capacity of Kanawha river, of which navigable capacity New river is an essential part; that the interest of plaintiff in the power of the stream is subordinate to such public right or servitude; that Congress is the sole judge of what means are necessary for the conservation and improvement of navigable capacity so long as the means which it adopts have some positive relation to that purpose; that the power of Congress to preserve and enlarge navigable capacity is continually existent; that it is for Congress to determine when and how that power shall be brought into full force and activity, and its failure, before the enactment of the legislation now under consideration [*i. e.* Federal Water Power Act], to employ its full power for the purpose of preserving and improving navigable capacity in no way altered or circumscribed the right to do so when Congress determined that the necessity for such action had arisen.

CHALLENGING in the district court the argument of Hon. Huston Thompson, special assistant to the Attorney General, that the Federal Water Power Act was a valid exercise of the power of Congress to improve navigation, Mr. Baker asserted that the statute was not what it purported to be—an act in aid of the constitutional object of preserving navigation.

"It is rather a scheme," he declared, "by which the United States government seeks to become the proprietor



The Constitutionality of the Federal Power Statute

"THE 'sword' . . . aimed at the Federal Power statute was formidable in the hand of an advocate of great ability and eloquence. The case against the constitutionality of this statute had been presented before, both in and outside of the courts, by lawyers of distinction; it had never been presented with more brilliancy or power."

and owner, not the regulator, of the entire hydroelectric power system of the country without paying fair value for it."

The fact that the Federal Water Power Act may have had other objects than the improvement of navigation did not seriously trouble the court.

"In Arizona *v.* California ([1931] 283 U. S. 423)," said the court, "the Supreme Court observed that 'the fact that purposes other than navigation will also be served could not invalidate the exercise of the authority conferred, even if those other purposes would not alone have justified an exercise of congressional power.'"

The court thought that "the proposed regulation is incidental to the preservation of the flow of an important stream in which the public of the United States has a substantial interest."

"While a number of the proposed regulations," concluded the court, "are probably far reaching in their effect, and may, at least at first blush, appear to be radical in their nature, this court cannot say on the case presented that they do not bear positive relation to the regulation of interstate and foreign commerce or that the act of Congress authorizing them is unconstitutional and void."

THUS holding that the Commission had acted under a constitutional statute when it issued its finding and order against the Appalachian Electric Power Company, the district court dismissed the bill of complaint. Thereupon the case went up to the United States Circuit Court of Appeals.

The constitutionality of the power statute was not a bridge which the United States Circuit Court of Appeals found it necessary to cross; for that court held that the district court had been without jurisdiction to hear the case.

Viewed as a suit for injunction to restrain unconstitutional acts, the court was without jurisdiction because the defendants were not resi-

dents of the district. Viewed as a suit to remove cloud from title to the plaintiff's real estate, the court was without jurisdiction, since the United States was the real party in interest, that is, the adverse claimant, and the United States not being present, the court could not try the rights of the United States behind its back. So reasoned the circuit court in an opinion by Judge Parker and remanded the case to the district court with instructions to dismiss.[2]

WHERE does this decision of the circuit court of appeals, which the Supreme Court has declined to review, leave the Appalachian Electric Power Company?

In a "dilemma," according to the company.

"The fact," it said to the Supreme Court in its petition for certiorari, "that the circuit court of appeals, after holding that there is no jurisdiction of the suit in this particular district court, proceeded to pass upon the question whether the petitioner is without any relief against the respondents in any other action in any court or forum, has created the possibility that its decision may be urged as *res judicata* in another suit in this or any other forum."

Careful examination of Judge Parker's opinion in the circuit court of appeals leads to the conclusion that the hurdles which that opinion set up to further suits by the company are not imaginary. If the company sues in the District of Columbia to require the commissioners to cancel the order and finding objected to, it must face Judge Parker's assertion that "any cancellation of orders or expunging of records would necessarily be done by defendants in their official capacity; and suits against them to compel action in their official capacity are suits against the United States, which cannot be maintained as the United States has not consented to be sued."

IF the company sues the commissioners in the District of Columbia to set aside the finding and order on the ground that such finding and order are not supported by evidence, it must meet Judge Parker's statement that such a suit would be one affecting the action of the commission in its official capacity and "would be in effect a suit against the United States."

Does the opinion of the circuit court of appeals also set up obstacles to a suit in the District of Columbia to enjoin the commissioners from bringing proceedings for the enforcement of its finding and order on the ground that the commissioners exceeded their statutory and constitutional powers?

The company thought so; and there appears to be some ground for so thinking. While Judge Parker, speaking for the circuit court of appeals, apparently recognized the doctrine "that equity will, in a proper case, restrain officials of the government from acts constituting an invasion of individual rights where

[2] It may be noted in passing that since the decision of the circuit court of appeals bills have appeared in Congress (H. R. 7961 and H. R. 7962) which would confer jurisdiction upon the district court in the district where the plaintiff resides over officers and commissions of the United States sued as individuals or in their official capacity. Had such a bill been law at the time of the decision in the "New River" Case, the court would have had a personal jurisdiction over the defendants, which the United States Circuit Court of Appeals held it lacked.

such acts are not authorized by statute or where the statute authorizing them is void because in conflict with some provision of the Constitution," [3] he nevertheless proceeded to point out an analogy between the case at bar and one in which the United States was held to be a necessary party.[4]

THAT case was a suit brought by the state of Louisiana to enjoin the Secretary of the Interior from disposing of certain swamp lands which the state insisted had been previously granted to it by Congress. The Secretary challenged the jurisdiction of the court on the ground that the suit was really one against the United States, which had not consented to be sued. The court held that the case raised questions of law and fact affecting the interest of the United States which could not be tried "behind its back."

The United States under the Federal Water Power Act asserts the right to take over power projects on nonnavigable streams that are found to affect the interests of interstate or foreign commerce. Judge Parker saw no difference between such a right and the right claimed by the United States in the Louisiana case. He said:

> Louisiana *v.* Garfield (1908) 211 U. S. 70, 53 L. ed. 92, 29 S. Ct. 31, is very much in point. . . . So far as the presence of the United States as a necessary party is concerned, there would seem to be no difference between a suit involving the validity of title to lands and one involving the validity of orders under which rights are asserted by the United States.

Such are the obstacles set up by the circuit court of appeals to suits for injunctive relief from findings and orders of the Federal Power Commission. Whatever may be the legal effect of the Supreme Court's denial of certiorari, that action certainly leaves these obstacles standing in the middle of the road. And, according to the Appalachian Electric Power Company, they are serious obstacles.

OF course, there is nothing to prevent this company or any other company, situated on a nonnavigable tributary or on a navigable stream, from questioning the constitutionality of the commission's jurisdiction as a defense to any suit brought by the United States to restrain the construction or operation of its project without commission license. However, the Attorney General would have to institute such suit.

As a matter of fact, on March 24, 1934, the commission announced that it had requested the Attorney General to seek an injunction to restrain unlicensed construction by the Electro-Metallurgical Company (successor to and affiliate of the New Kanawha Power Co.) of a hydro-project at Hawks Nest on the New river in West Virginia. The principal issue involved in this controversy, however, appears to be the challenged authority of the former executive secretary of the predecessor commission to permit the withdrawal of the declaration of intention to build a project.

While the New Kanawha Power Company thus far has not questioned the constitutionality of the Federal Power Act, there is no certainty that it will not do so in defending the forthcoming suit.

[3] Philadelphia Co. *v.* Stimson (1912) 223 U. S. 605, 620; and Ferris *v.* Wilbur (1928) 27 F. (2d) 262.

[4] Louisiana *v.* Garfield (1908) 211 U. S. 70.

The Rapidly Changing Picture of Highway Transport

In the opinion of the author fresh vision and original outlook are needed in solving motor regulation problems, which should recognize the fact that an entirely new form of transportation has been developed which requires a different treatment from that deemed necessary for other forms of transport. Highway carriers, he maintains, should be regulated with due consideration to the nature of highway service and the public demand for that service, with fair treatment of competing agencies.

By HOMER H. SHANNON

All members of utility regulatory bodies should, at not too infrequent intervals, give thought to Janus, the Roman god who perpetually had a face to both the place of sunrise and that of sunset.

Surely of all public administrative bodies, that exercising the *quasi* judicial functions of a Federal or state railroad and utilities commission, with its intimate and vital control over the development and service provided by transportation agencies and other corporations "affected with a public interest" are charged with more than a literal observance of fixed, statute law, and should be abreast of the stream of events.

The ideal commissioner should have a face to the future, as well as to the past, if his acts are to be intelligent and he is truly to protect the public interest. It is perhaps even more important that what he does be intelligent in terms of what is to come, in a reasonably immediate sense, than that he be intelligent in terms of what is past.

The Roman god Janus is a particularly appropriate object for a few well-chosen supplications from members of regulatory bodies at present because, at a time when he was a more virile god, Janus had learned to expect just that, when matters of unusual importance were to be undertaken. The fabrication of a new transportation philosophy and a complete reworking of regulatory theory —it is no less than that with which we are faced—would seem to be such an occasion.

That Federal and state statutes, bringing this amazing and troublesome thing, highway transpor-

tation, under control and into some kind of intelligent relationship to the transportation whole, are to be enacted in the immediate future can scarcely be questioned by anyone even mildly familiar with the facts. It would seem desirable that those who influence the fashioning of this transportation legislation and who are charged with its administration should have an eye to what the object of all the fuss will be in their own day, to an even greater degree than to what it has been in the few short years it has been anything at all to talk about.

Four members, or former members, of the Interstate Commerce Commission were heard at the last annual meeting of the National Association of Railroad and Utilities Commissioners in Cincinnati. It was a striking fact that each found a peculiarly forceful way of testifying to his belief in a fundamental remaking of the transportation picture in the immediate future.

REGULATORY developments up to October, 1929, might be regarded as natural steps in an evolutionary process, said Commissioner Patrick J. Farrell, adding that "the revolution in the transportation world which began about that date and has continued with ever-increasing force since has caused those interested in matters of regulation to stop, look, and listen."

That he was thoroughly convinced that the country was on the threshhold of "very notable changes in transportation methods" was the declaration of Joseph B. Eastman, Federal Coördinator of Transportation, in a letter of regret which he addressed to the associaion because of inability to be present on that occasion.

"I assume that in all the history of the world, and certainly so far as the history of this country is concerned, there has never been a time when transportation, in particular, was in such a state of flux," asserted Commissioner Claude R. Porter.

To this was added the voice of former Commissioner Ernest I. Lewis, now director of the commission's bureau of valuation. As preface to a highly technical discussion of valuation, he confessed to a firm belief in the impermanence of existing transportation forms.

"We are in a period of wonderful and historic transition," he insisted. "We don't know where we are going or what we will find when we get there."

Such testimony may not be needed to clinch the point that what is today will not be tomorrow in the field of transportation, but that each of these four men should have thought it important to call attention to the changing picture in this way lends peculiar emphasis to the thesis that something like fresh vision, original outlook, is required if this problem of the regulation of highway transport is to be met in a way that will do credit to the agents, directly and indirectly, of that regulation. The tomorrow referred to at the beginning of this paragraph, it may be well to remark, is one from which the curtain is already being drawn aside.

New facts require new theory, and an uncommon alertness to the significance of current happenings is imperative at a time when change is so outstanding a characteristic as it is in the

transportation field today. This should suggest, at least, the notion that regulatory principles which served well enough in the past, even in a relatively immediate past, may have to be reëxamined, and their application questioned today.

It is not too much to say that, to date, those who have been wrestling with the problem of disciplining the lusty youth of the motor vehicle in its ubiquitous conquest of freshly laid slabs of concrete—smooth ribbons of it leading directly to the doorway of virtually every shipper and consumer in the country—have failed to realize the extreme newness, or pioneering aspect, of their task in its full import. Too often, at least, there has been an effort to fit the old coat on the recently arrived stranger, or, to multiply figures, to resort to the bed of Procrustes.

What is needed is a truly creative act, or a multiplicity of acts, that will give us regulatory principles suited to an entirely altered transportation situation.

This does not mean that tradition is to be discarded, that the world is not continuous in time and space, but simply that full recognition must be given to the logical possibility, if not certainty, that what may have served well enough under one set of conditions may not serve at all when those conditions are so radically altered that the reasons for applying the particular regulatory principles, the sources of their validation, are no longer in existence.

There has been, it is true, considerable experimentation with the regulation of motor trucks on the part of the states, but it is highly questionable if anything of a lasting or permanent nature has as yet found form in a state statute. It is questionable whether there has as yet been any adequate crystallization of the new regulatory concepts that must come out of the active transportation revolution—a revolution that only has gotten well under way in the period of the depression. It is not possible, of course, to speak with complete certainty and at the same time with entire sanity on such a matter, but there is good reason to believe greater changes are immediately in store than have been observed in the recent past, and there is considerable ground for doubting that the changes of the last half-dozen years have been fully apprehended, and their significance interpreted.

The automotive vehicle is still in a state of active development. Its efficiency is being rapidly perfected. The possibilities of radical innovations that will greatly increase that

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efficiency are, at best, speculative, but automotive engineers of good repute insist they are considerable. An historical sense, coupled with a sensitiveness to existing trends, suggests that the roadbed on which the motor vehicle now operates will be, twenty-five years from now, regarded as primitive.

A SYSTEM of classified highways, with freight and passenger ways for both local and express service, is a logical development.

That will reduce the cost of highway service and will increase its flexibility. Motor transport technique, by which is meant the elaborate service and organization paraphernalia that surround it and make it effective, is still very much in the trial and error stage. The railroad plant must be rebuilt from top to bottom, from roadbed to personnel, to conform with the motor age, rather than with horse-and-buggy days and the period of the country's physical expansion. Just what that will mean is a highly controversial subject.

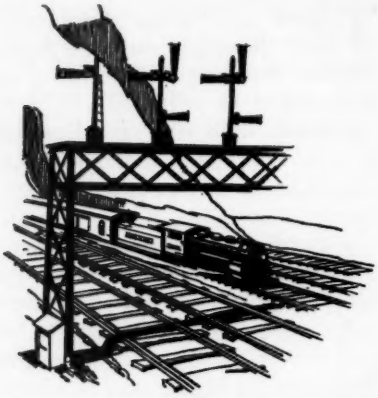
And not less important, the legal basis of transportation itself must be, and is in the process of being, altered to meet social requirements resulting from not one but a dozen revolutions —revolutions in production, in distribution, in communication, in marketing. The technocrats, as well as the Commission on Recent Social Trends appointed by former President Hoover, and one's own eyes and memory have served to bring home the fact that the last thirty years have ushered in more change of a fundamental nature in the physical basis of our civilization than any other period of history of many times that length.

THERE are today few organized dissenters on the question whether commercial highway transport should be regulated. Effective regulation, both state and interstate, is to be taken as a matter of course, and its ardent advocates are becoming more ardent daily.

Natural evolutionary processes at work in the transportation field were speeded up tremendously by what we call the depression. As long as business was showing a satisfactory profit there was no urgent need to abandon custom and habit. Appearance of red ink on the ledgers of shippers opened the doors to the motor transport salesman or solicitor. Mr. Eastman has said on a number of occasions that his office is to be regarded in the light of a catalytic agent—that is, his function is to hasten processes already begun, by bringing to the surface and making effective ideas for the improvement of transportation that were latent in the turmoil of the day.

The depression vastly increased the volume of goods moving on the highway, and as a result of that and the difficulties in which the railroads found themselves, ideas on highway regulation crystallized almost overnight.

HIGHWAY regulation, it may be insisted, is an admitted fact of the future, and here it will be assumed to be much desired. The question remains as to the form it is to take, assuming further that form has not been ultimately cast. The nature of regulation is all important, both to the various transportation agencies and to the public at large. Properly con-



Regulatory Principles under Changed Form of Transport

"It should not be taken for granted that regulatory principles now applied to the railroads should be applied to a developing competitive form of transportation of an entirely different order; nor, for that matter, that principles which were suitable enough to the railroads before this new form of transportation swept down on us in its present strength are still properly applicable to them."

ceived and administered it will further the development of a well-rounded transportation system that may be expected to increase greatly the comfort and convenience of life, both in terms of cost and service.

If anything more were needed the Roosevelt "New Deal" and NRA set the tide in the direction of regulation, not alone of transportation but of many other commercial activities formerly immune, driving home the certainty of early and effective regulation of state and interstate commercial highway services.

Highway "anarchy" will no more be tolerated than will the old rugged individualism in the production of petroleum. In fact, it has far less chance of survival. And that is none.

And what are these new principles and concepts that must take the place of the old lamps in the regulatory field? It would be quite too much to expect a full answer on that score here, but examination of the current scene may give a few clues.

It should be understood that, in part, what is meant by the need of new concepts to deal with the extremely chaotic state of affairs we are faced with is that it should not be taken for granted that regulatory principles now applied to the railroads should be applied to a developing competitive form of transportation of an entirely different order; nor, for that matter, that principles which were suitable enough to the railroads before this new form of transportation swept down on us in its present strength are still properly applicable to them. Recent discussion has indicated strongly that there is a growing appreciation of this, but there remains too much of a disposition to approach the problem of motor transport regulation as though it were merely a matter of the practical application of principles of railroad regulation to highway operations. Nothing could be less true.

Among "fixed" ideas incorporated in discussion of regulation that

seem certain to go the way of the dodo and the dinosaurs unless unexpected capacity for adaptation is developed by them are those of competition and states' rights. "Value of service," as it is embodied in railroad classification, is almost certain to be completely vanquished by "cost of service." And the somewhat inelastic conception of "convenience and necessity," as it has found expression in state statutes and regulatory pronouncements dealing with motor transport, must be given a modern slant by a vision of the enormous potentialities of this amazingly radical development in the art of moving people and things about the surface of the earth.

IT would be difficult to overestimate the importance of the part played by the competitive principle in the development of the industry and commerce of this country. Many, however, are beginning to believe that the primary problem faced today is that of learning to use technique and resources already at hand, rather than of further concentration on physical expansion. At any rate, competition is no longer regarded as an unmixed blessing as it was when the most important elements embodied in current transportation legislation were formulated.

Coördinator Eastman insists that the dominant purpose behind the Interstate Commerce Act of 1887, which for the first time brought the railroads under Federal authority, was control of competition among the railroads themselves — competition that was ruining all of them, at the expense of shipper and investor. However that may be, it is certain that the competition of the 1920's is now regarded as far too expensive a luxury for the 1930's. This change in the general tenor of public opinion has, as yet, found little expression in regulatory legislation, but it may be expected to condition profoundly legislation of the future.

"Convenience and necessity" must take on a fresh meaning. That, combined with a new outlook on the competition fetish, will mean that a revitalized "public interest" will be the sole arbiter in the establishment and control of future highway services.

RAIL service can never be adequate when something better offers. Walking is not good enough if one is in a hurry and an airplane is available. A quill will not do when there is a job for a printing press. A candle would be inadequate for lighting a modern factory. Conditioned only by the new outlook on competition, this should be the spirit in which convenience and necessity is interpreted. The regulatory Janus should keep open his eyes toward the sunrise as well as those toward the sunset.

As for states' rights, so dear to state commissioners, how can it be thought that a theory of government that came to flower fully a hundred years ago will, unchanged, survive the railroad, the motor car, the airplane, the telegraph, the telephone, the radio, the cinema, etc.? The evils of bureaucracy are real enough, and it may be that decentralization is among the most effective means of mitigating them, but the public interest can scarcely be broken up into forty-eight public interests today. The adminis-

trative difficulties that would result would be only less than would follow an attempt to apply, in all respects, the kind of regulation that has grown up around the railroads to the tens of thousands of highway carriers.

THE principle of "what the traffic will bear," or "value of service," as it has found expression in the price sheets issued by the railroads covering their services, only incidentally qualifies as one of the concepts that must give way to new conditions or be radically reformed. Its position does, however, admirably illustrate the revolutionary nature of this thing, highway transportation. It dates back to the toll roads of the Eighteenth Century. In his *Wealth of Nations,* written in 1776, more than fifty years before construction of the first railroad in this country was begun, Adam Smith said:

> When the toll upon carriages of luxury, post chaises, etc., is made somewhat higher in proportion to their weight than upon carriages of necessary use, such as carts, wagons, etc., the indolence and vanity of the rich is made to contribute in a very easy manner to the relief of the poor by rendering cheaper the transportation of heavy goods to all the different parts of the country.

COLLECTIVELY, the railroads enjoyed a true monopoly in inland transportation for more than half a century before commercial highway transportation of the modern vintage changed that. Under those conditions there was no difficulty in enforcing a freight rate system that spread transportation costs where they could most easily be borne. It was decidedly fortunate for this country that this was so; but our modern highway system, joined to the automotive vehicle, inevitably dooms the easy economics of that former day. Cost of service will increasingly dictate the level of charges exacted by commercial transportation agencies in a situation where any shipper can become his own carrier.

The elementary importance of keeping the vision clear while contemplating the issues involved in regulation of commercial motor carrier services cannot be too strongly pressed. That is so not because of its academic or logical significance, but because concepts have not yet crystallized with sufficient definiteness for us to be sure of our way.

One of the worst bugaboos in the regulatory lexicon is that of "equality" of regulation—equality of regulation as between different forms of transportation, railroads and highways, waterways and airways.

Surely the regulatory problem is not to be regarded as simply a horse handicapping event on a grandiose scale, in which the ideal is the establishment of "fair" competitive relations between two or more contenders

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¶ "MOTOR *transport technique, . . . The railroad plant must be rebuilt from top to bottom, from roadbed to personnel, to conform with the motor age, rather than with horse-and-buggy days and the period of the country's physical expansion. Just what that will mean is a highly controversial subject.*"

for a sporting honor. It is far more vital and important than that. Practical adjustments in competitive relationships may be desirable and essential to an adequate, healthy transportation machine and to the full service the public is entitled to, but they do not constitute the central regulatory problem. That problem requires an approach to the regulation of highway carriers strictly in terms of the nature of the highway services, and what the public wants of them. Similarly it would require that railroads be regulated in terms of railroads, and not in terms of petroleum pipe lines, or some other thing.

THE railroads have been regulated as they have because of certain characteristics inherent in themselves, and not because of any imagined similarity or difference between the construction of a steam locomotive and "Old Dobbin." The body of the regulation to which they submit was put there because it was thought to be in the public interest. Railroads did, in fact, have a monopoly in inland transportation up to quite recently, and still have a monopoly in a considerable portion of their old field.

To the extent conditions have altered it may be that the regulation applied to them should be overhauled. But in principle there would appear to be no more reason for attaching a regulatory provision deemed necessary to railroad transportation to highway transportation, just because it had been attached to the railroad, than there would be for promulgating safety rules for highway operations paralleling those promulgated for the juggernaut of the rails.

It is quite possible it may be necessary to recognize a certain kind of regulation as among the competitive disabilities of the railroad, just as its fixed roadbed and the enormous capital expenditure required to place it in service are to be regarded.

AS stated before, in some instances it may prove practically desirable to equalize competitive opportunities between rail transportation companies and transportation companies operating over highways. That is entirely a practical problem. It is not bound up with the pure regulatory problem, except in an incidental way. It is not a matter of principle. If the highway operator is to be controlled in his operations he should be controlled because it is in the public interest, and for no other reason. That must at no time be lost sight of. It may be that it is, incidentally, also in the operator's interest, or that of the railroads. If so, that is secondary. Despite this it is likely that regulation in the interest of the transportation agencies themselves will bulk larger in the future than it has in the past. This will follow from the modified view of competition.

EQUALITY of treatment, or fairness as between competing agencies, is properly the subject of consideration in the construction of transportation legislation only to the extent competitive facts have a practical bearing on the kind of transportation service the public wants and requires.

And along the same line, it is equally important that distinctions be kept clear as between this kind of regulation and police regulation of the highways, subsidization of one transporta-

Competitive Relationships Not the Central Regulatory Problem

"PRACTICAL adjustments in competitive relationships may be desirable and essential to an adequate, healthy transportation machine and to the full service the public is entitled to, but they do not constitute the central regulatory problem. That problem requires an approach to the regulation of highway carriers strictly in terms of the nature of the highway services, and what the public wants of them."

tion agency or the other, and allied matters. The questions of subsidy and that of police regulation have only an indirect connection with the regulatory problem.

Police regulation covers all such matters as the size and weight of vehicles and speeds of operation. Strictly, limitations in this connection are either safety measures or have to do with highway costs. That is something apart from the provision of transportation service at reasonable rates and without discrimination as between users, which is the essential concern of commission regulation.

Social legislation dealing with hours of service of employees and conditions under which they are employed, in some of its branches, also has public safety as its guiding principle. But for the most part there should be no direct effort to legislate certain conditions of employment for the highway carriers just because they have been legislated for railroads. It may be there is a presumption that social legislation in one field would be reasonable in the other, not because of competition between operators in the two fields, but because society regards certain conditions of employment as just and equitable as between employers and employees.

IT is at least well to keep these distinctions in mind in formulating reasonable regulation for highway services. Otherwise strange inconsistencies may and do develop. The conditions surrounding highway transportation and the nature of the thing itself should dictate the regulation to be applied. The fact that there are railroads is one of a great many things embraced under "the conditions surrounding highway transportation."

Today, quite definitely, the fact that we have commercial motor freight and passenger services on the highways is truly among the conditions surrounding rail transportation, and in that sense should be considered in dealing with railroad regulation, but in that sense only. There is no more reason, in principle, for equalizing the conditions under which one operates with those to which the other is sub-

ject than there would be for equalizing the size of the wheels used on their vehicles.

As a final point that perhaps more vitally involves this matter of the need for new transportation concepts, it should be axiomatic that the shipper who does not own trucks has the same right of access to the highways as the one who does. It should be, but it does not appear to be, universally recognized as such. It is frequently argued that some kind of special tax should be imposed on the commercial transport operator by virtue of his using the highways as a place to do business.

It must be clear that the fact one shipper finds it to his interest to invest in his own vehicles in no way alters his status so far as the right to the use of publicly provided facilities is concerned. To make any such tax distinction would militate against the small shipper in favor of the large shipper, as the former is not in a position to supply his own carrier service for an occasional shipment. Such action would plainly be contrary to the whole spirit and intent of all regulatory policy.

Taxation in terms of the extent of use is another matter, but even here the way is none too plain. The history of public highways, as distinguished from "toll" ways, offers no precedent for such taxation.

Without doubt the equities in this connection are yet to be formulated. In one way of looking at it, there would seem to be no more reason for taxing according to use, where highways are concerned, than where parks and other public conveniences are concerned. No one ever thought of taxing according to use of the post-office system, except to the extent postal rates do that. In just that way, the gasoline tax today taxes according to use. But to this the objection is sometimes raised that because of the efficiency of the motor truck the tax actually falls more lightly on the operator of vehicles of that kind than on the ordinary private user. This objection does not apply at all as between the large industrial corporation with its fleet of trucks and the commercial motor transport operator. To the extent it does apply as between the latter and the private citizen who takes the family out for a Sunday afternoon drive, the contention may be advanced that it is universal for the wholesale buyer to get a lower price than the retail purchaser.

This is enough at least to indicate that all is not as simple as some of the parties at interest would have us believe. The formulation of concepts that will truly represent the public interest in this situation is not to be accomplished in a few short years —nor in a few long ones of the recent variety.

Regulation has both a legal and economic basis.

In its legal aspect, as applied to railroads, it largely derives from the right of eminent domain. Put as simply as possible, that is the right to condemn property for public use. In the abstract, no one but the state can forcibly take private property, at a price or otherwise; and private property cannot be condemned except for public use. Since, in the

¶ "EQUALITY *of treatment, or fairness as between competing agencies, is properly the subject of consideration in the construction of transportation legislation only to the extent competitive facts have a practical bearing on the kind of transportation service the public wants and requires.*"

nature of things, it would be impossible to build a railroad without that right, no one but the state could build a railroad. The device employed to circumvent that dilemma was this: The state delegates its right to a private corporation or individual, but that carries with it the conception that the right is to be used in the public interest. That is the compelling condition at the historical bottom of public regulation of the railroads.

THE economic basis of regulation is more complicated. It had its beginning in the early conception, as modern commerce began to develop, of a public interest attached to the conduct of a so-called common carrier service. Even when commerce and industry were relatively unspecialized it was recognized that the nature of the transportation facilities available —the nature of the services and charges—had a vital and intimate bearing on the general public welfare. It had to do with the safety of the individual on his travels, and was closely tied in with the success or failure of all business transactions. But, less abstractly, the early common carrier enjoyed a monopoly, and the railroad, in the railroad era, was a natural monopoly. The points exclusive to a single line could obtain railroad service only at the pleasure of the single agency. No public control in such a situation would have been, and was, intolerable.

THE state granted the railroad its right of existence, and the monopoly characteristics of railroad service was the compelling economic reason and justification for the state's declaration that the railroad was "affected with a public interest"—and for its jealous control over the manner in which the railroad conducted itself.

The enormous investment called for to establish railway service made it desirable that the state protect the railroad in its monopoly, refusing other grants of its sovereign authority to condemn land for public use that would have the effect of unduly burdening the public.

It is scarcely necessary to point out that the conditions surrounding the inauguration of a common carrier service upon the highway are vastly different.

"One thing is certain," said the National Transportation Committee headed by former President Coolidge up to the time of his death, "automobile transportation is an advance in the march of progress. It is here to stay. We cannot invent restrictions. We can only apply such regulation and assess such taxes as would be necessary if there were no railroads and let the effect be what it may."

It cannot be denied that there is here a threat to the ability of the railroad to get a return on its full investment, but that should be regarded as more a question of obsolescence than of creating "fair" competitive conditions. Coördinator Eastman is authority for the statement that there are large possibilities for the railroads in the use of motor vehicles as auxiliaries of rail service. It is probably equally true that there are large possibilities for the motor transport operator in the use of rails to extend his contact with the shipping world beyond his own terminals. Neither can make effective use of the other without a substantial revision of the legal basis of transportation. There is just as grave danger of intolerable injustice as a result of anachronistic, hasty highway legislation, as there is from no legislation at all.

Regulation should be no respecter of transportation persons.

It should, above all, rest on a clear vision of what is to be regulated and the ends to be attained by that regulation. Change is not necessarily progress. But it is certain there can be no progress without change. The symbol of the regulatory commissions should be that of Janus, with a face set both toward the future and the long past. Contemplation of that past should be to avoid reproducing it, as well as to carry ahead what wisdom was there.

Kilowatts Are Cheap Servants

A couple of years ago, in speaking before the Washington Rotary, I translated the kilowatt hours of my electric bill into equivalent man hours. The result showed that I had more than ten silent and invisible servants working for me in my Washington home.

In his recent article on the "Promise of Power," Stuart Chase in similar fashion humanizes the electric bill for his Connecticut farm-home, where the various tasks performed by the electric current represent work that would require twenty-six brawny men. Both of us arrive at the same conclusion—namely that we are paying a minimum wage of only 2 cents and a mill or two a day for these unseen but ever-ready workers in our homes.

Mr. Chase figures the ratio of mechanical power cost to human muscle cost at 230 to 1, and this function of the central electric station in adapting power to living he regards as "its transcendent rôle in the years before us." Or we may say that electricity's real worth as an inexpensive helper of the housewife measures up to Ruskin's definition: "Value is the life-giving power of anything."

But coming back to the Washington house and the Connecticut farm-home, obviously, the owners thereof could not afford to hire those ten, even less those twenty-six workers, required to furnish the motive power for all our modern conveniences. Unemployment does not result from our lavish use of the energy derived from mineral fuels or water power; if we were suddenly cut off from this cheap supply from the power house and could not substitute gas for electricity in some of its wonder-working functions, we would not replace it with man-driven machines. We simply could not afford the service and would of necessity go without.

Recognition of the two-hundred fold differential in cost between electric power and human energy helps us to realize how indispensable and irreplaceable are kilowatts in our homes.

—George Otis Smith.

Pioneers in the Power Industry

Alex Dow

To this canny Scotsman who steers a great utility enterprise, politicians, says the author of this sketch, are just tolerable, but even then they are better than the reformers, the most obnoxious of partisans. When dishonest the reformers are worse than politicians because the latter at least have the reputation for staying sold. On the other hand, the conscientious reformers are so often hopelessly impractical doctrinaires.

By ARCHER E. KNOWLTON

In his leisure time as one of the employees of the old Edison Illuminating Company of Detroit, Henry Ford was putting his first dream of the Model T into metal when Alex Dow was called from management of the city's municipal plant to take active charge of the private utility. Dow's thirty-seven years of administration thus began when the automotive industry began and his enterprise has grown handsomely alongside the automotive industry still centered in that city.

Today at nearly seventy-two he is the dean of the operating executives in the utility field who arose out of an engineering background. Largely that particular group can still take pride in its accomplishments. Few executives from that technical profession have had to be on the apologetic side, because, like Dow, they have stuck close to the operating function and let others get singed toying with bigger stakes.

Now one does not get to be dean by common acclaim merely through outliving one's contemporaries. It rests upon reverence and respect and a recognition of stalwart, sterling qualities to gain that standing. Being innately and consistently honest helps immensely. And among business men there is also admiration for the one who can be shrewd in a gracious manner.

Dow was born in Glasgow and so born canny. He is right so often as to be real canny about it. Also absolutely uncanny in choosing the right time to be right. The attribute, furthermore, is exercised most graciously by him and along with it goes a very keen and delicate

sense of humor that is disarming.

Generations of his first-son ancestors had worked iron over their forges. This boy's ambition was to be a marine engineer but on quitting school before he was twelve he spent six years in railroad clerical service until he had a chance to approach his ambition by getting a Cunard clerkship. That at least gave him the opportunity to commune with marine engineering.

In 1882, the same year that electricity had its birth as an industry in his country, he came here. But it was at first to work six years at railroading and telegraphy before joining Charles Francis Brush's staff on arc lighting generators. An early job under that electrical machinery pioneer was the design and installation of cables for the lighting of Chicago's South park system. A reputation for competency and fearless honesty in that work won him a call to Detroit in 1893 to start a municipal plant in the capacity of municipal engineer.

BEFORE he left that job to become manager for the local utility company a leading citizen said of him in particular and his staff in general "you people down there at the city lighting plant are political eunuchs," a sinister compliment.

Of course Dow hired the laborers the ward bosses sent him. He promised it but he also promised he wouldn't keep them on unless they were good. The rejects bounced back so promptly upon the bosses that, in self-defense, they learned to send him only the good workers.

To Dow, politicians are just tolerable but even then they are better than the reformers, the most obnoxious of partisans. When dishonest the reformers are worse than politicians because the latter at least have the reputation for staying sold. On the other hand the conscientious reformers are so often hopelessly impractical doctrinaires.

Possibly the best way to sketch a portrait of the Detroit Edison head is to excerpt some of the gems of pure Anglo-Saxon English that sparkle in his many addresses before company groups, utility associations, and engineering gatherings. Principles reiterated over the years mean more than sudden protestations of innocence.

THUS, as early as 1898 he found flaws in the attitude of utility companies:

> Their managers seem to have been the only people who did not see what was coming. They failed to keep in touch with their public.

Rather prophetic for 1898 and especially pertinent in 1934. He closed the same address with:

> There is an immediate need for clear thinking and for well-considered speech and action—for speech telling the public that electric light companies desire to do business according to the Golden Rule and for acts plainly in conformity with the speech.

For many years Alex Dow was head of the rate research committee of the old National Electric Light Association. That position was testimony to his years of contribution to the art of rate making. Getting the customer to use more so that the rate can be reduced is no recently invented pastime but one that was uppermost in Dow's mind as far back as 1899.

ONE little touch of his humor is what he related to a gathering in

Philadelphia that year in connection with rates. He was experimenting with a "burning-hours" type of rate but found the application of such a differential rate to residence lighting a bit awkward. To illustrate:

> A man comes at you with a residence bill and says "I have a lot of lights connected but there are only three in the family and we do not burn much light." I used to say to such a party. "See here; this requires either a change in the rate or an increase in the family. I will figure on the change in rate and you figure on the increase in family." Sometimes I catch him that way and sometimes I don't.

Twenty-five years later he was admitting in *Electrical World* that there was still no general acceptance of a perfect rate theory but that there had been agreement upon fundamental principles. Rates are made for the future and consequently analysis of past costs cannot be any more than a guide. That makes rate making an art rather than a science.

JOHN Hopkinson and Arthur Wright still have their disciples, the former holding that every kilowatt of reservation required by a customer should earn an identical annual return, and the latter preaching that every kilowatt hour sold should carry the same margin of profit.

It was as early as 1898 that the active room method of approximating demand for a residence lighting rate was devised and adopted in Detroit. It has been used exclusively since then. The area rates of other companies are newer but fundamentally the same in principle.

Mr. Dow was also an advocate of "area" rates in a totally different sense, that is:

> Rate schedules applicable over large economic areas which disregard the petty differences there might be between the cost or the merits or service in single municipalities. I was for many years a voice crying in the wilderness. I find myself nowadays in good company.

He had in mind such things as the later gateway decision in Martinsville, Indiana, the equalization of rates in Greater New York, and the general trend in that direction.

IN the fiscal arena Alex Dow has some very positive notions. He believes in depreciation and believes in providing for it out of operations, adding to the retirement reserve from surplus, if necessary, to keep it at a safe level. Public record of his thinking on the subject begins in 1907 when he said:

> The law requires the national bank to make good at once any impairment of its capital. I would not be a bit sorry, as a manager of a public service corporation on salary, to see a law requiring that we must make good at once any impairment of the property.

On the same subject about ten years ago he added the following:

> I hold that establishment and maintenance of a reserve is ethically desirable

¶ "ONE *does not get to be dean by common acclaim merely through outliving one's contemporaries. It rests upon reverence and respect and a recognition of stalwart, sterling qualities to gain that standing. Being innately and consistently honest helps immensely. And among business men there is also admiration for the one who can be shrewd in a gracious manner.*"

because, in addition to securing from the public the full payment which is collectible by the utility as a whole, it protects the free and open market to which security holders are entitled against harm by covert financial expedients which might be adopted for one cause (or excuse) or another by the management. Further, it has the ethical advantage of being evidence of good faith. It is fulfillment of the injunction to avoid every appearance of evil—not only to do no wrong but to avoid the semblance of wrongdoing. . . . There will presently be an end of confusion which resulted from the false assumption that the existence of a reserve was an acknowledgement of the existent depreciation, rather than an anticipation of its inevitable accrual.

TODAY he might change that opinion in the light of the new trend toward straight-line depreciation reflected by the Interstate Commerce Commission in its telephone rulings, by Wisconsin, and by New York's recent accounting order.

But Dow, not infallible, did guess wrong on one point. But who did not? In this same address (1925) he said:

There are not likely to be three successive years in which any representative unit in our industry will not be able to make its necessary replacements of each year out of that year's earnings.

He did set up as a minimum a reserve fund of 6 per cent, so as to be capable of meeting three times the 2 per cent of retirement which experience has shown to be adequate for an industry that has passed out of its infancy. In spite of the prolongation of the depression he has managed to keep his retirement reserve at levels much above that minimum partly by curtailed dividends and partly by transfers from surplus. With minor exceptions there has been no year in which the Detroit Edison Company could not take care of current write-offs out of current earnings.

ON the question of finance Mr. Dow, some ten years ago, made the remark that:

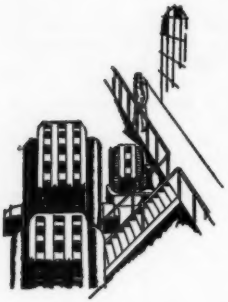
The psychology of the money market is most peculiar. It is distinctly feminine in that you may live with it for a great many years and you may guess 95 times out of a hundred what it is going to do but you can't guess once why it did it. . . . The individual investor wants to know when and how he can take his money out, but collectively the kind of investors we depend upon are the people who are willing to put it in as the growth of the business requires.

The most unpleasant thing that has ever happened, to my knowledge, to executives has been to find themselves with a lot of short-time obligations falling due and the money market running the wrong way. . . . That need for vision, for looking ahead, for seeing what is going to happen, is imposed upon the executive not only in financial matters of that character but in other questions of what is going to be the commercial reaction to a proposed procedure.

THAT particular question has been one which the institution of holding companies professed to answer and on this point a year later (1925) our subject made the following comment:

The position of the holding company today is getting to require a very exact definition and a very exact observance of not merely the law but the ethics: and those holding companies who have wisely restricted their dealings with their subsidiaries or controlled properties, first, to the receiving of a reasonable or liberal return for money invested and, secondly, to the repayment to them for expenses incurred or payment to them for specified service actually rendered and billed, are going to be in a happy position of not being subject to challenge. While those others whose relations are covered by a bunched amount of so much per cent of gross earnings, or other figures of that kind, are going to be required to go into details and give a trustee's accounting. That is perhaps prophecy and it may be prophecy of evil, because a surge of public opinion or of court precedents in such a direction is bound to have some of the characteristics of a tidal wave and do damage as it goes along. That such a movement is in its initial stage now is beyond doubt, in at least one state, and I think others are threatening to change the rule of evidence in such a manner that any

Plums Do Not Drop from the Sky



"In the twenty-two years since Dow became president of the present Detroit Edison Company the maximum load has multiplied over eight times, the output nearly nine times, and the coal to make a kilowatt hour has been reduced by nearly two thirds. None of these plums dropped from the sky. They were the reward of zeal and diligence of an organization imbued by a chief who knew the potentialities of the business, of the personnel in it, and of the public it serves."

controlling company collecting a management fee will be required to show what it does in return for the amount received.

That certainly was prophecy and prophecy of the most lucid type; it marks the president of the Detroit Company as being definitely operating-minded. In further testimony of his devotion to the operating task it might be quoted from the same address that:

> The public which we serve is a creature of habit. Being for the moment content, it does not like to have its contentment disturbed. Ethically, it is better that our public should be well pleased than well served, because (after all) it is happiness which is pursued by the individual and to make him unhappy or uncomfortable or to trouble him with much palaver merely that exact justice shall be done, is conduct that merits no thanks and may deserve reprobation.

From subsequent actions, it is evident that the speaker did not mean thereby to avoid all approach to his customers by way of the printed page because during the last year he published over his signature in the Detroit newspapers a unique series of 46 letters addressed to the customers of the Edison Company. These were couched in the simplest of language and calculated to make just one point in each letter.

One by one they took up, not the intricacies of utility economics and regulation, but rather the readily appreciable rudiments of running a business taking a large amount of invested capital and paying plenty in taxes. In one of them he said:

> We have supposed that the ins and outs of our daily work have no general interest. We have assumed that we were regarded as straightforward business people. We have done our best to deserve that regard. Of course we have been lied about occasionally. A common type of lie was to charge us with the sins and blunders of far-away people with whom we have nothing to do. It now seems in order to explain that we are now just ordinary business people doing our day's work honestly; and that we are an independent outfit serving just this corner of Michigan; and that we are not controlled by any alien interests. . . . There has never been anything to prevent a speculator from breaking or buying into the industry and we who are in it have no way of getting him out of it. We cannot read him out of church or take him down to the woodshed.

If that does not disclose Alex Dow's attitude toward usurpers, intruders, and exploiters, I cannot imagine what else he could have said and still use simple language unless it be some-

thing that he had said in a previous letter in the series:

> The Detroit Edison Company is *not* a subsidiary of any holding company. It is *not* controlled by any banking group or by syndicate. It has some holding companies and some investment trusts among its stockholders. They bought their stock fairly, the same as you might do. None of these controls the directors or the management. None of them has ever offered to do so.

With all this foresight of the muddle into which holding company domination would lead the utilities he also had a perception of how government meddling would develop. To show this there may be extracts inserted out of his address on the production of electricity by steam power before the American Electrochemical Society in 1924. Thus:

> Well, the U. S. Government is taking care of us more or less, at a high expense telling us how to deport ourselves, how to take care of our health, how to brush our teeth, comb our hair,—if we have any —and do all the similar things right down from the cradle to the grave. It is doing things for us that we used to leave to the churches, to people who felt called upon by God to be good to their fellow mortals.

Undoubtedly, in the light of today's emergency he would modify the severity of his criticism because all of his staff will testify he is highly responsive to human want, sufferings, and aspirations. I doubt, however, whether he would modify the meddling accusation in so far as it applied to the utilities, especially those which have preserved the degree of corporate independence which this has.

IT has already been said that Mr. Dow is primarily an engineer. The Detroit Company is noted for the pioneering it has done in the engineering aspects of power production and distribution. Thus at the time when direct current was revealing its limitations as a system for large scale distribution and utilization of energy the 25-cycle and 60-cycle alternating current system were proposed as alternatives. Quite wisely he kept his company out of the 25-cycle group. Others who went in that direction have since had to get aboard the 60-cycle bandwagon and at some sacrifice for their poorer guess.

As stations grew in magnitude in order that increasing amounts of energy could be generated economically it became necessary to use larger and larger boilers and turbines. The large boilers of today had their beginnings in the courageous installations of large-sized units in the Detroit Company's Delray power house. A little later not only did he contract for the then largest horizontal turbine generator (a 45,000-kilowatt unit) but he also committed the design in that and other plants to the employment of several units of duplicate dimensions. Interchangeability of parts was a feature which he foresaw would make for economy in maintenance and the assurance of reliable service. His plants have been noted for the adoption of advances in the art of thermodynamics and for the means whereby heat energy could be conserved and thus the cost of a kilowatt hour made progressively less and less.

INSTEAD of relying upon the designers of the electrical machinery manufacturers to envision and incorporate new ideas, his engineers have usually been in the van of the procession and instituted a stride forward which the whole industry later copied.

¶ "REFORMERS *who would push regulation further and further into the province of management would do well to ask whether the requisite broad-gauge competency is to be found in the purely legal, purely financial, purely commercial, or impurely political circles from which publicly imposed regulator-managers would be most likely to emanate.*"

With all this there has been no desire merely to capture records but rather to adopt features which would improve overall economies of both invested funds and fuel consumption under the boilers. Initiation of the automatic substation, paired feeders for distribution, high reactance transformers for secondary interconnections, ring transmission bus, adaptation of cables to higher voltages, load-center location of power plants —these are some of the technical innovations for which credit is generally accorded to Mr. Dow and his engineers.

THE utility executive has to delve in the realms of engineering, finance, public psychology, political economy, and social ethics. In the latter field Mr. Dow has some very tangible convictions. They are not those that come from the backwoods background which colors the thinking of so many Americans who descend from Colonial ancestry. He migrated here from a country where long-sustained feudalism had caused various strata to smart under social injustices. His boyhood was spent in one of the old-world cities. He knew what it means to live under the complexities of a congested industrialized civilization. Consequently his appreciation of the complicated values in human relationship differentiates him from the American pioneer reared in a much simpler society. It has given him an insight into motives and an unusual ability both to understand and to inquire.

HE is an inveterate reader and stores multitudes of facts from which to draw upon in his inspirational contacts with his associates. It also gives him a capacity for putting the element of surprise into his expressed opinions. He is never stumped when called upon for extemporaneous remarks. Among the utility people he is famed for strategy, repartee, graciousness, vigor, and convincing exposition.

In the twenty-two years since Dow became president of the present Detroit Edison Company the maximum load has multiplied over eight times, the output nearly nine times, and the coal to make a kilowatt hour has been reduced by nearly two thirds. None of these plums dropped from the sky. They were the reward of zeal and diligence of an organization imbued by a chief who knew the potentialities of the business, of the personnel in it, and of the public it serves.

All the ramifications of this man's personality are duplicated by ramifications of the utility business. Anyone who wishes to discount laudation

of just one figure in it may do so but he will have missed the point completely if he concludes that managing a utility successfully is an easy job. In this instance sustained success seems to have hinged on erudition out of lessons in the past, a delicate balance of acumen in matters financial, technical, and psychological, along with a discreet imaginative vision of the future. When all this is flavored with a personal magnetism and an eminence the combination appears to work.

REFORMERS who would push regulation further and further into the province of management would do well to ask whether the requisite broad-gauge competency is to be found in the purely legal, purely financial, purely commercial, or impurely political circles from which publicly imposed regulator-managers would be most likely to emanate. By and large Detroit is typical of the secure, straightforward, unalloyed, locally responsive utility. As a class these have been run by men who climbed the ladder from rugged beginnings and, if not originally engineers, could not escape getting engineering sense while growing with the business.

Guessing wrong technically in a business that has $6 invested in technical facilities for every dollar of annual revenue courts disaster in times of rate pressure, leaping taxation, and anemic sales.

The canny Scotsman who steers the Detroit enterprise has, however, done very nicely in spite of the fact that his is the city whose bank collapses a year ago started the final plunge into the canyon of all indexes.

Facts Worth Noting

JAPAN'S possession, Formosa, has more than 4,500,000 population and 13,000 telephone subscribers.

* *

THE average cash fare on electric railways in cities of 25,000 population and over as of December 31, 1933, was 8.1430 cents compared to 8.1968 cents as of December 31, 1932.

* *

THE total investment in the manufactured gas industry in 1933 is estimated at $2,500,000,000 and in the natural gas utilities $2,000,000,000, a total investment of $4,500,000,000. The investment in the natural gas industry includes $1,600,000,000 invested in natural gas mains and pipe lines.

* *

ELECTRIC output in 1933 showed its first year-to-year increase since 1929, according to figures released by the geological survey of the Department of Interior, showing total annual production last year of 85,300,000,000 kilowatt hours, which compares with the 1932 output of 83,153,000,000, an increase of about 3 per cent.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

GEORGE W. NORRIS
U. S. Senator from Nebraska.

"The private power companies are not taxpayers."

HENRY FORD

"The hardest thing I ever had to do was to reduce wages."

HENRY A. WALLACE
Secretary of Agriculture.

"It may be necessary to make a public utility out of agriculture"

FREDERICK M. DAVENPORT
Former U. S. Representative from New York.

"We have been in some danger of a night-riding spirit of bureaucratic conformity, but we are getting over that."

MALCOLM MUIR
President, McGraw-Hill Publishing Company.

"The American Nation was built on the profit system, and to remain the great Nation that it is, it must continue the profit system."

DONALD R. RICHBERG
General Counsel, National Recovery Administration.

"The political government cannot take over and operate the commercial enterprises of the nation without destroying the constitutional foundations of our government."

WENDELL L. WILLKIE
President, The Commonwealth & Southern Corporation.

"Private operation of electric utilities has been technically efficient. Maximum power loads are available on instant demand, as well as during the normal periods of home and business lighting."

THOMAS A. EDISON

"The government never really goes into business, for it never makes ends meet, and that is the first requisite of business. It just mixes a little business with a lot of politics and no one ever gets a chance to find out what is actually going on."

ANNIE NATHAN MEYER

"He who looks eye to eye with me on these crucial matters, he is my brother. Whether his nose be Grecian or aquiline is of no importance, nor whether his skin be black or white or yellow. All that matters is that in his keeping lie the progress, the honor, and the hope of humanity."

Siphoning of Utility Profits

A Massachusetts lawyer says this is the main purpose of holding companies and voluntary trusts and that consequently there is urgent need of their regulation notwithstanding the views of the Massachusetts commission.

By HENRY J. ROPER

PRESIDENT Roosevelt in speaking of the Power Issue has said that, "the public service commissions of many states have often failed to live up to the high purposes for which they were created. The public service commission is not a mere judicial body to act solely as umpire between complaining consumer or complaining investor on the one hand, and the great public utility system on the other . . . it must be a tribune of the people, putting its engineering, accounting, and legal resources into real use for the purpose of getting the facts and doing justice to both the consumer and the investors in public utilities. This means positive and active protection of the public against private greed." The President proposes regulation and control of holding companies by the Federal Power Commission.

The Federal Trade Commission's exhaustive inquiry into utility practices and the investigation in New York state conducted by the Special Revision Commission clearly demonstrates the vital influence which holding companies exercise over the conduct of the local operating utilities.

LET us consider the Massachusetts experience.

Massachusetts gas and electric companies were incorporated to manufacture and distribute their products at what it ought to cost them to manufacture and distribute the service, plus a reasonable profit. Public franchises were given to these utilities. These franchises are grants or special privileges conferred by the state for the benefit of the citizens. As the franchises and the utility corporations cannot exist independently, it is uniformly held that the franchises are not assignable. In one case the court said:

> As applied to a gas company, "franchise" means the right to manufacture and supply

> gas for a particular locality and to exercise the special rights and privileges in the streets and elsewhere which are essential to the proper performance of its public duty and the gain of its private emoluments and without which it could not exist successfully.[1]

In an early case before our Supreme Court, Justice Hoar, speaking for the court, said:

> The right of a railroad company to continue in being depends upon the performance of its public duties. Having once established its road, if that and its franchise of managing, using, and taking tolls or fares upon the same are alienated, its whole power to perform its most important functions is at an end. A manufacturing company may sell its mill, and buy another; but a railroad company cannot make a new railroad at its pleasure.[2]

THE law as laid down by Justice Hoar applies to our local gas and electric utilities. Our local utilities, by selling out to systems, holding companies, or trusts, cannot transfer the performance of their public duties to third parties without the consent of the state. The charters of these utilities that have alienated their public franchises can be forfeited and the corporations dissolved. The systems and power companies that own or control, directly or indirectly, our operating utilities, have very questionable rights therein.

The holding company or trust is a device to circumvent our statutes and common law pertaining to public service corporations.

In most cases, their real purpose is not the holding of the stock but the management and control of the policies of our utilities. By substitution of ownership of the stock, a new entity exercises the franchises and performs the public duties which were delegated by the state to the local utility.

There is no law on our books that says that power systems, holding companies, or trusts can manage, dominate, and for all practical purposes operate our local utilities. These things can only be done with the consent of our state legislature.

THE public service commissions of many of our states admit that they cannot cope with the activities of holding companies and are looking to the Federal government for assistance. The attitude of the regulatory bodies of the states will, in a large measure, determine the action of the Federal government.

The learned chairman of our regulatory body has publicly declared: "If I judge the temper of the people of Massachusetts correctly, they will never submit to Federal regulation." He was of the opinion that no legislation was necessary by the state and that our regulatory body could protect our operating utilities from any possible harm by holding companies.

Now our commission has admitted that even under the Blue Sky law on our statute books, it has no jurisdiction over the issuance of securities of a Massachusetts voluntary trust or foreign holding company. Our regulatory body has advocated no legislation that would give it control over a voluntary trust, a creation of our own laws. The history of this state during the past eight or ten years has demonstrated that one of the chief reasons for forming voluntary trusts has been to provide reservoirs in which to siphon off, and so conceal,

[1] Attorney General *v.* Haverhill Gas Light Co. (1913) 215 Mass. 394, 101 N. E. 1061.

[2] Commonwealth *v.* Smith (1865) 10 Allen, 448.

Need for Control of Holding Companies and Voluntary Trusts

"THE problem of controlling public utility holding companies and Massachusetts voluntary trusts is most important. Within the past ten years utility holding companies and trusts have voided not only the spirit but the letter of our laws with impunity. By the substitution of ownership and the form of voluntary trusts they have acquired, for all practical purposes, ownership and management of our domestic gas and electric companies."

the unjustified profits taken from our consuming public by gas and electric companies.

ANOTHER dominant member of our commission has expressed doubt as to the wisdom of further regulation by the Federal government and believes that the state authorities would seem to have ample authority to protect the operating companies and their customers, *if they choose to exercise it.*

The problem of controlling public utility holding companies and Massachusetts voluntary trusts is most important. Within the past ten years utility holding companies and trusts have voided not only the spirit but the letter of our laws with impunity. By the substitution of ownership and the form of voluntary trusts they have acquired, for all practical purposes, ownership and management of our domestic gas and electric companies.

There are now about six large systems which control and manage the bulk of our gas and electric companies in this state. Exploitation by the systems is often accomplished by management companies, service companies, engineering companies, and other holding companies or trusts superimposed on our domestic operating company. Many of these diverse corporations or trusts are not utilities at all, although they dominate and completely control our local utilities. Our regulatory body has no control over them and, in actual practice, it has been demonstrated that the authority to protect the operating companies has not been exercised and the domestic utility and the consuming public have suffered.

THE main purpose of some of these holding companies or trusts

is to conceal the real profits of the operating companies and by overcapitalization to make it appear that the rates are reasonable. Holding company and trust demands on our local utilities weaken them by losses of essential revenue and have a direct effect upon the rate structure for which our regulatory body is responsible.

The powerful and influential power systems, of which the holding companies and trusts are mere instrumentalities, have also obtained ownership or control of our water-power sites. They have built huge generating plants to supply electricity to our local utilities. Many of the small local generating plants have been dismantled or discarded by them. The process will continue until there is little more than the distributing mains, wires, and poles in our cities and towns. Perhaps, unwittingly, the systems in their reaching out for profits are overreaching themselves. They are simplifying and making easy one of the problems connected with municipal ownership. The value of the property actually used in a city or town for the supplying of service is being cut down and, as the huge plants generating electricity or manufacturing gas are utilities, they must furnish their products to all that apply and without discrimination in price for similar service.

SINCE 1927, our regulatory body has had the power to take the initiative in investigations and rate reductions. On account of inertia or *laissez faire* policy, it has fostered the growth of holding companies or trusts that now own or control the majority of our gas and electric operating companies. Our public service commission is the successor to our railroad commission. The railroad commission was created to protect the consuming public and shippers against the unjust exactions of powerful utility groups.

The ordinary ratepayer, city, or town has not the resources to force rate reductions from intrenched and powerful power groups. This fact was well demonstrated in the so-called Cambridge and Worcester rate cases where thousands of dollars were spent by the utilities resisting rate reductions. As a result of these cases, our regulatory body was given the power to initiate proceedings as representatives of the people.

The commission has singularly failed to exercise its power for the benefit of the consuming public. Rates have been reduced in some cases but only to avoid public agitation and inquiry into costs. Very few voluntary rate reductions have been made by these private companies, and from 1921 on, most of them were making earnings far out of proportion to anything they had shown before. These earnings were the attraction for the holding companies and trusts.

THE promoters of a Massachusetts trust do not have to be citizens and sometimes do not even come into the state. These trusts escape the statutory liability of the directors of corporations. They do not have to make the reports required of corporations and they escape many forms of taxation to which corporations are subjected by law.

The chairman of our regulatory body contends that his commission

can adequately cope with trusts and holding companies through its control over the operating utilities. A concrete case might be cited of the helplessness of our commission in dealing with the activities of a Massachusetts trust.

In 1929, six men, none of whom was a resident of this state, associated together to form a voluntary trust. The majority of the stock of a local utility was purchased and put in the name of the trust. Then one of the trust associates became president of the utility and a change made in the other officers and directors of the corporation.

ALMOST immediately, the new officers of the utility borrowed $1,500,000 from the banks on short-term notes which did not require the approval of our department of public utilities. At the same time, the officials of the utility loaned $1,250,000 of this money to the trust without any security. When the utility came before our commission to refund $950,000 of the $1,500,000 borrowed from the banks, our regulatory body said that the $1,250,000 loaned to the trust was lost or stolen and that the trust had no assets and was insolvent. However, the utility was allowed to increase its capitalization by an issue of bonds to refund the illegal transactions. The utility was paying 12 per cent per annum dividends. Its assets and earnings were such that, by cutting down or postponing for a short time dividend payments, the indebtedness could have been taken care of without a bond issue.

Dividends at the rate of 12 per cent per annum continued to be paid and they went out of the state, presumably to the group that exploited the utility. Only after the commission found itself helpless was a law passed to prevent this particular type of exploitation.

It is about time our commission withdrew its opposition to Federal regulation.

The public and investors of Massachusetts are entitled to a better policy than that of locking the barn door after the horse is stolen.

"IN one of the largest railway networks in the world, the track crews use portable telephones which may be attached to the railroad's private wires overhead at any point along the right of way. A long wooden pole, known as the line pole, supports the wires which lead from the portable telephone on one end to the other where these wires hook onto the overhead circuit. Whenever a crew has to move to some distant point, utilizing a little track car which operates by gasoline motor, the foreman telephones to the distant switching center and finds out if the tracks are clear. If he needs more men or additional supplies, he similarly utilizes the improvised hookup."
—*Telegraph and Telephone Age.*

What Others Think

Is "Going Value" Going Out?

BACK in 1915 the Supreme Court of the United States in Des Moines Gas Co. *v.* Des Moines, 238 U. S. 153, P.U.R.1915D, 577, 584, laid down the regulatory principle that, in valuing utility property for rate-making purposes, allowance must be made for "going value" or "going concern value," *i.e.*, the value which inheres in a plant when its business is established as distinguished from a so-called bare bones plant completed and ready to operate but without its patronage attached. Of course, this problem had previously received some attention from the court in Willcox *v.* Consolidated Gas Co. (1909) 212 U. S. 19, 53 L. ed. 382, and considerable discussion by text-writers (Whitten on Valuation of Public Service Corporations, §§ 560–569). But it was in the Des Moines Case that Judge Day, rendering the opinion of the court, stated:

> That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned although dedicated to public use. Each case must be controlled by its own circumstances, and the actual question here is: In view of the facts found, and the method of valuation used by him, did the master sufficiently include this element in determining the value of the property of this company for rate-making purposes?

FOLLOWING the Des Moines Case it became almost the accepted regulatory practice to include a separate allowance for going concern value in all rate-making valuations. About 1927 the Ohio commission rebelled against such automatic allowances and, in valuing the electric properties of the Hardin Wyandot Lighting Company, serving the city of Kenton, refused to make any separate allowance on the ground that it had already valued various units of the property, not at their bare isolated physical value but as an integrated property—or to use the accepted phrase, as a going concern. The commission was sustained by the Ohio Supreme Court (118 Ohio St. 592, P.U.R. 1928D, 560). There has since followed a steady stream of commission decisions breaking away from the former commission trend of making a separate and independent allowance for going concern value.

The California commission in 1932 refused to make a separate allowance for going value in the case of an electric utility where new business costs had been allowed as operating expenses (California Farm Bureau Federation *v.* San Joaquin Light & P. Corp. P.U.R.1932D, 310). The District of Columbia commission refused to make a separate allowance in valuing the Chesapeake & Potomac Telephone Company's properties for the city of Washington (P.U.R.1932E, 193). The following commissions: Idaho, Maine, Montana, New York, Oklahoma, Pennsylvania, Washington, and Wisconsin, have all refused to make separate allowances for going concern value in rate cases developing since 1928.

The most recent and pointed example of commission repudiation of the separate allowance for going concern value occurred in an opinion of the Pennsylvania commission in Chambersburg *v.* Chambersburg Gas Co. digested in PUBLIC UTILITIES FORTNIGHTLY, July 5, 1934, page 55. In that case the Pennsylvania appellate court had remanded the commission's rate reduction

order containing a rate base finding with instructions that the commission consider additional evidence in determining whether a specific allowance should be made for going value. In a supreme court ruling the commission refused to accept the company's contention that the superior court construction required the inclusion of an independent allowance for going value and took the position that the court's ruling only required the commission to take testimony and then to consider whether the allowance should be made or not. The commission thereupon proceeded for the second time in the same case to refuse to make any separate allowance.

In addition to this cumulative evidence of record, it is interesting to note the recent declaration by one of the leading state utility commissioners —Richard T. Higgins of the Connecticut Public Utilities Commission. In an address before the New England Gas Association convention, Commissioner Higgins said:

> In addition to the valuation of the actual physical property of the plant, there is added certain intangible items, such as interest and taxes during construction, working capital, cost of financing, going concern value, etc. I would make no objections to the addition of reasonable amounts for these items, excepting the items of cost of financing and going concern value. After all the other elements of property both tangible and intangible, have been evaluated, then to superimpose on that structure a percentage or arbitrary amount for going concern value is like penalizing the public for becoming patrons of the company and industry created for its special benefit and welfare, and especially is this true when the cost of securing new business and attaching patrons which makes it a going concern is treated as an operating expense under the uniform system of accounting. With due deference to judicial decisions, my twenty-three years' experience in the public regulation of utilities leads me to believe as a practical result that going concern value should not be added as a specific item of valuation, that the utility company and property were created for the specific purpose of serving the public and that without public patronage or without being a going concern the property would have little more than junk value.

When commissioners are not afraid to state informally in the course of public addresses that they do not believe any longer in the principle of making separate allowances for going concern value, there is much ground for speculation as to whether this much discussed and rather complicated problem is not headed for the stone pile.

—F. X. W.

STATE COMMISSION REGULATION OF PUBLIC UTILITIES. By Richard T. Higgins. Address before the New England Gas Association Convention. Boston, Mass. February 9, 1934.

Why Do People Want Communism?

In a thoughtful article in the June issue of *The Atlantic Monthly*, Dr. Arthur E. Morgan, chairman of what Norman Thomas has branded as the "only truly socialistic achievement of the New Deal"—the Tennessee Valley Authority—sets forth the three views that can logically be taken about government in business: First, there is the conservative position which assumes that government is essentially corrupt or incompetent or both, and that business is properly the affair of private initiative, which the government has no right to usurp. Secondly, there is the "radical" position that any industry dealing with products or services essential to the people, *i. e.*, "public service" (which especially applies to public utility service) should be operated without profit by the people and for the people and that it is wrong in principle to permit these natural public monopolies to be owned, operated, manipulated, and speculated in for private profit, and that such practice leads to exploitation, economic despotism, political corruption, and public degeneration.

Dr. Morgan finds fault with both of these first two positions. The conservatives overlook the fact that certain things, such as the printing of stamped envelopes, can be done more cheaply and conveniently by the Post Office Department than by private enterprise. Concerning the radicals, Dr. Morgan says:

> The efficient and economical production of goods by modern private industry is one of the greatest marvels of human history. It represents intelligent, faithful, courageous, and persistent effort of which the public is generally unaware. To discredit that accomplishment by wholesale cheap condemnation is tragically unfair. It is scarcely conceivable that modern industry could have resulted from a rigid communistic or socialist régime.

THE third school of thought which has the apparent blessing of Dr. Morgan is referred to as the "typically American attitude." It is strictly pragmatic and eschews any attempt to follow abstract principle. The acid test by which this "American attitude" measures the propriety or impropriety of government in business is the old hard-boiled business-man's eternal question: "Which is cheaper?"

Developing this thought, Dr. Morgan points out that the practical American mind has never fallen for socialism in cases where private initiative has demonstrated superior accomplishment. Henry Ford is given as a demonstration. Mr. Ford represents in many ways capitalistic individualism of the most pronounced type and yet the public as a whole is apparently convinced that he has tried to give good value and to pay good wages and he has become a hero.

On the other hand, the American public has never been afraid of communistic arrangements when it has been clearly shown that they are superior in economy and performance to private management. Dr. Morgan cites as examples, the public school system (developed with public approval out of former private education to the chagrin of the private educators); public fire department service; public highways (developed against the failing opposition of the old turnpike operators of early American history).

SOME other enterprises, Dr. Morgan points out, are of the border-line variety; that is to say, that private initiative succeeds better in some places and public operation in others. As a result, both public and private projects of this type exist and flourish side by side. As an example, he points to the success of such strictly private institutions of higher learning as Harvard University compared with the admitted success of many of our state universities. Again, there is the "socialistic" parcel post service of the Post Office operating side by side with the Railway Express Company. In conclusion Dr. Morgan states:

> The fact is, we have not handled either our public business or our private business any too well. The common-sense American is from Missouri; he wants to be shown. He thinks the world is not yet finished. He wants to keep on trying both public ownership and private ownership in the hope that better methods may develop. He wishes that both public-ownership men and private-ownership men would stop their dishonorable misrepresentation and their biased propaganda. It is time for both the managers of private utilities and the proponents of public ownership and operation to play the game openly and fairly, like mature, self-respecting, and dignified men and women. Such a change would add to the self-respect and decency of American life, and would greatly help to relieve us of prejudice and confusion.

DR. MORGAN confines himself, however, to specific and limited applications of socialism in America. What about attempts to develop a general communistic society? Dr. T. N. Carver, Professor Emeritus of Harvard University, writing in *Nation's Business* gives us a brief but interesting history of the beginning and end of a number of communistic communities right here in the United States. Applying Dr. Morgan's pragmatic principle of "Does it pay?" apparently these American communists found out invariably that it didn't pay.

There is no space here to recount the failure of these movements except to

St. Louis Daily Globe-Democrat

THE PEOPLE'S FRIEND

mention and classify them, as Dr. Carver did, into religious and nonreligious communities. First of all, there were more than sixty of the various Shaker colonies which started with the Ephrata Community in Pennsylvania in 1732 and extend from Maine to California and from Washington to Florida. Then there is the Zion City community of Illinois, known principally because of the persistent attitude of its leader in refusing to believe that the world is

other than a flat plane. There is the House of David at Bar Harbor, Michigan, known to most of us by its colorful and bewhiskered baseball teams.

Many of these religious communities were of foreign origin, such as the Amana Society of Iowa (German) started in 1843 and still surviving under a very modified form of communism, the Separatists of Zoar, Ohio (1819–1898), the Bishop Hill Colony of Illinois (1846–1862), and the Bruederhof Communities of South Dakota (1862–still surviving). Native American movements have had less luck, such as the Perfectionists of Oneida, New York (1848–1879).

CONCERNING the religious communities, Dr. Carver observes that they have lasted and some are lasting a little longer than the economic communities, because religious fervor serves to replace certain natural tendencies which disrupt the nonreligious groups. Even the religious groups, he finds, have rarely continued to flourish beyond the third generation.

The nonreligious or economic communities were short-lived, indeed. The Fourieristic experiment, known as the North American Phalanx which started in New Jersey with the indorsement of Horace Greeley and other notables in 1843 lasted a bare dozen years. Robert Owen, famous British economic philosopher, started a very intellectual development in New Harmony, Ind., in 1822, which lasted two years. Most successful and longest-lived of the nonreligious communities was the Icarian movement, following the teachings of the French philosopher and leader, Etienne Cabet. It started at Nauvoo, Ill., in 1849, moved to Iowa in 1860, and was abandoned in 1895 following several schisms.

DR. CARVER points out that these communistic movements were purely voluntary and therefore were perfectly consistent with our civil laws. United States law protects such communities as much as any other group of citizens as long as they do not attempt to resort to coercive measures.

That is precisely the reason why all of them with a few lingering exceptions have failed, in the estimation of Dr. Carver. Being voluntary, the communistic form of society had to compete with private capitalism to survive and it could not do so. Dr. Carver commented:

> That is why coercive communism under a dictatorship is the only kind that can possibly be made to work except in small and carefully selected groups. The moment you leave men free to pay for what they like and to spend their money for the benefit of those for whom they care, communism is dead and that which is called individualism is born.
>
> Under any possible system of voluntarism, men will do precisely those things. Unless coerced by authority, they will try to get what they and their friends like, in preference to what they don't like. That will mean that some things will be in demand and others not. The only alternative is to ration men by authority. Again, men will try to do good to those for whom they care rather than to those for whom they do not care. The only way to prevent that is to conscript workers by authority.

He concludes:

> It looks as though capitalism has nothing to fear from communism so long as men are free to choose which they like better. Capitalism can have no objection to the trying of communistic experiments so long as both capitalism and communism are voluntary and treated alike by the government. On the other hand, communism has everything to fear from capitalism. It does not dare to let men start capitalistic enterprises in a communistic state. It does not dare offer the same protection to capitalistic enterprises as to communistic enterprises. It must use the strong hand of government to suppress capitalism. In a really free country we can safely give communistic experiments the same protection and the same opportunities as capitalistic experiments. Capitalism can stand competition with communism. Communism cannot stand competition with capitalism. That tells an important truth and pretty nearly closes the argument.

GOING back to Dr. Morgan's test of the desirability of particular application of communistic government, perhaps few utility men are prepared to deny that government ownership of utilities ought to receive attention if it

is demonstrated that it is actually cheaper and better for the most people. The disputes arise, however, out of the claims of both sides. Private operators declare that the public plants are taking unfair advantage by window dressing operating figures without revealing indirect subsidies through taxation, or tax exemption for operations, etc. Public ownership advocates declare that these records, such as that of the Canadian Hydro, are true on their face.

President Samuel Ferguson, of the Hartford Electric Light Company, writing in the *Electrical World*, undertakes to explain why the Canadians charge 2 cents per kilowatt hour while the average American price is 5.5 cents:

> The true explanation lies in the difference in average use and the effect of usage in reducing distribution cost. In the United States the average use is about 600 kilowatt hours per year; in Canada over 2,000. This reduces all fixed costs by more than two thirds, if figured on a kilowatt-hour basis. . . . The cost (of electricity in the United States) is high because of small use —small use because of high price. It will not satisfy the American public to excuse and explain the high price, no matter how valid the reason. Some way must be found to break the vicious circle.

And so we see that the determination of Dr. Morgan's question, "Which is cheaper?" may be more difficult than he intimates. Then again there is the question of whether municipal utility plants are not operated to the disadvantage of the surrounding rural patrons, thereby giving the plants a mathematical paper advantage that might attract public approval under false pretenses. Leon O. Whitsell, California railroad commissioner, writing in *Industrial News Review*, states:

> Municipal ownership is an ever-present issue in California. The movement has, within recent times, assumed statewide proportions and if carried to its logical conclusion bids fair to place this state in the forefront as America's leading municipal-ownership commonwealth.
>
> In this movement I sense danger ahead. I believe that divorcing the city load from our great utility system points a downward path to the social and economic life of rural California. I believe that this trend will eventually prove harmful to both city and rural sections.
>
> The movement at the present time is very definitely directed against the electrical utilities and has for its intended purpose the taking over by the municipalities of distribution facilities within their corporate limits. This "splitting up" of system loads into elementary parts is, in my humble opinion, anti-social, a step backward—a direct reversal of the processes by which the almost universal use of electrical energy in modern social and industrial life has been accomplished.
>
> I am not seeking controversy with the advocates of municipal ownership, nor do I wish to be understood as arguing the merit or demerits of municipal ownership *per se*. I merely seek to point out what I conceive to be the ultimate danger which threatens our rural people and the resultant harm which will be visited upon our city dwellers if this present intensified movement gains further momentum and the evident intention of its proponents is fully consummated.

He concludes:

> I appreciate the fact that the moving incentive to municipal ownership usually is the desire for lower rates. With this desire I am in full accord, but in my judgment, this financial gain is only temporary and must eventually entail general community losses out of all proportion to the savings attained by the municipal consumers.

Thus the solution of the problem seems as far away as ever. If, as, and when some method can be devised whereby the economy and performance of public plants can be compared fairly in every aspect with private operation, then and then only shall we be able to answer Dr. Morgan's question, "Which is cheaper?" without hestitation and act accordingly.

—F. X. W.

GOVERNMENT IN BUSINESS. By Arthur E. Morgan. *The Atlantic Monthly*. July, 1934.

LESSONS OF COMMUNISTIC COLONIES. By T. N. Carver. *Nation's Business*. July, 1934.

DISTRIBUTION COSTS. By Samuel Ferguson. *Electrical World*. December 2, 1933.

MUNICIPAL OWNERSHIP AND THE FARMER. By Leon O. Whitsell. *Industrial News Review*. May, 1934.

To Speak or Not to Speak— Is That the Question?

WHEN the Edison Electric Institute early in June elected as its president Thomas N. McCarter, head of the Public Service Corporation of New Jersey, it selected one of the industry's most outspoken leaders. That, at least, was the concensus of most commentators at that time. Already events seem to have substantiated this opinion.

Within a fortnight after his election as the chief spokesman for the electric utility industry, Mr. McCarter had an opportunity to discuss publicly one of the most important issues facing the power companies—the agitation for lower rates, which has become quite widespread of late.

The occasion was Mr. McCarter's appearance as a witness before the public utilities commission of New Jersey in opening his company's side of a rate case. Although he was speaking as president of the Public Service Corporation, nevertheless, Mr. McCarter's new position as head of the EEI naturally gives added significance to his remarks before the commission. Some excerpts of Mr. McCarter's testimony as published in the *Public Service News* follow:

> We are living in a day that is surcharged with hysteria. One form that it takes is an attack upon the light and power industry, and the fundamental reason seems to be because it has been reasonably prosperous. Whatever is good should be destroyed! The fad of the day is to imprint upon the brow of success the scarlet letter of sin. When will the American people learn that hysteria, carried to the point of threatened destruction through radical action, does not pay? No one objects to proper regulation of public utilities. All the enlightened utilities of the country have not only acquiesced in but coöperated with it. But overregulation and persecution has brought the whole railroad industry of this country to the brink of disaster and destroyed its credit. Overregulation, together with certain other economic factors, has already destroyed the electric railway industry as a going concern. Are these things in the public interest? And now the appetite of the radical is not satisfied, and if he has his way the light and power industry is listed for the same kind of treatment.
>
> The whole principle of regulation rests upon the theory that, because of the peculiar nature of the business, operating utilities shall always be limited to a fair return upon the value of the property devoted to the public use. They are not like the ordinary industrial concerns that are unlimited as to profit, and in good times can lay up proper surpluses with which to meet depressions like the present. Conversely the principle is just as deep-rooted that, as they are limited in earnings in good times, so they shall be protected in earnings in poor times.

POINTING out that the average bill paid by the 690,000 domestic consumers served by his company amounts to but $2.80 per month, or less than 10 cents per day, Mr. McCarter declared:

> One would think from the shouting that goes on about it that the public were being mulcted out of a large portion of their income by a grasping monopoly, and that the payments made constituted a very substantial part of the family budget. Let us look at the facts. Reliable statistics show that the average family budget, upon a percentage basis, is as follows:
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> | | |
> |---|---|
> | Food | 33% |
> | Housing | 20% |
> | Clothing | 12% |
> | Coal | 3.33% |
> | Electricity and gas | 1.67% |
> | Sundries | 30% |
> | Total | 100% |
>
> and as between gas and electricity, a further subdivision may be made of electricity 1 per cent; and gas ⅔ of 1 per cent. Thus this problem which affects 1 per cent of the domestic budget is exaggerated in importance beyond all reason.

TO what, if any, extent Mr. McCarter's remarks before the commission may suggest a revision in the *laissez faire* policy of the EEI is, of course, a matter of conjecture. But it is interesting to note that several of the leading trade journals believed a change in the industry's attitude was indicated at the recent EEI convention when re-

tiring president George B. Cortelyou, head of the Consolidated Gas Company of New York, decried the political persecution of the power companies and urged the industry to take its case to the country, "openly, fully, and fairly." The *Electrical World,* describing it as an admirable address in which there was much to which the electric light and power industry should give sustained attention, said:

> Mr. Cortelyou's suggestions not only should be considered but acted upon. Despite their preoccupation with current difficulties, the higher executives of the industry face the necessity of devoting time and thought to major industry problems and the path ahead. They must continue to keep the public aware of their industry as a continuous contributor of new and impressive accomplishment; they ought to present the case of the utilities so that hostile attacks, unfair regulation, and discriminatory taxation will not handicap progress, and they will have to change their policies and practices to meet the new conditions.
>
> All in the light and power industry must have the courage to go ahead, to contribute constructive measures to national recovery and to carry to the public the reflection of an optimistic and aggressive attitude. In the words of Mr. Cortelyou, "Whatever the obstacles in our path, we shall go forward with resolute determination to make the industry as great in leadership as it is in technical strength, to protect and defend its legal and constitutional rights against unjust aggression, to promote the widest possible use of its service at the least possible cost to every class of consumer, doing our work as well as we know how, striving always for further improvement."

And the *Gas Age-Record* made the following comments on Mr. Cortelyou's speech:

> He has answered governmental and other critics with dispassionate frankness. He has said what many holders of public utility securities have wanted to hear, and what political agitators and other misguided zealots well deserve.
>
> Mr. Cortelyou deserves the thanks of the gas and electric companies and all other public utilities for his logical, convincing, and illuminating address. On this and other pages we have been appealing for frank talk. Mr. Cortelyou has done more than defend a great industry; he has openly exposed the fallacies and subterfuges of those who would attempt to destroy legitimate business for their own selfish interests.

On the other hand, despite such outspokenness by these leaders, many observers believe that the electric light and power industry plans to maintain its policy of silence in the face of political agitation for lower rates, more taxes, and holding company criticism. They find that the industry's younger executives are "more in the mood to battle for business in the market place. And that is a good sign."

This commercial activity, as evidenced at the annual meeting of the EEI, is said to be a symptom of the growing recognition that the most pressing needs and the most promising opportunities now lie in the field of sales. A writer in *The Wall Street Journal,* commenting on the industry being counseled to "gird its battered loins with courage and go forth to bring in more business," says:

> It is a new clear note, in refreshing contrast to the industry's protracted chorus of lament over the injustices visited upon it by the gods of politics. To be sure, it has ample reason to complain, but what industry has not?
>
> Even more novel were some of the things said by one of these (convention) speakers, an executive of an electrical appliance manufacturing corporation, about the right way to get new consumers of electric current or persuade old consumers to use more. His hearers must have gasped to hear him declare that though the prices for current and the equipment to use it were not too high from the producer's standpoint, they were above the pocketbook level of the great majority of sales prospects. His remedy was lower prices for both. On behalf of his own division of the electric field, he promised electric refrigerators to sell at $80 and electric cooking ranges at $75, with other domestic appliances in proportion, provided quantity production were made feasible by retail market conditions.
>
> For this new cheerfulness in a hitherto gloomy quarter the Federal Household Appliance Corporation, offspring of the Tennessee Valley Authority, will probably not be backward in coming forward to claim a little credit. If the FHAC can get the check certified it must be paid. Wherever the credit belongs, the important thing is that there is at least some little prospect that the Tennessee Valley Authority's ambition to electrify existence for the submerged tenth—or are they nine tenths?—will bear the fruit of corporation

dividends far beyond the reach of government-owned or subsidized power projects. That is still only a prospect, but the prospect must appear if realization is ever to come. A time of idle capital and idle labor is a time for a great industry to begin for itself another chapter of usefulness, New Deal or old.

WOULD the electric utility industry strengthen its position if it would definitely adopt a national policy under which all members could unite in "taking its case to the country, openly, fully, and fairly?" Or, is it following the better course by letting each member decide for itself how it will handle its own particular problem?

Those who support the present turn-the-other-cheek policy evidently do not expect electric power problems to assume national importance for some time to come. Therefore, they say, a change in policy is uncalled for. But with the government's announced plans for a nation-wide development of the country's water-power resources, some of which already are well under way, those who contend that the industry should consider its problems from a broader aspect have much argument to support their position.

—E. S. B.

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The March of Events

Federal Communications Board Named by Roosevelt

PRESIDENT Roosevelt June 30th selected the following persons to administer the Communications Act, linking radio, the telegraph and telephone companies under revised and expanded Federal control:

Eugene O. Sykes of Mississippi, chairman, 7-year term; Thad H. Brown of Ohio, 6-year term; Paul Walker of Oklahoma, 5-year term; Norman Case of Rhode Island, 4-year term; Irvin Stuart of Texas, 3-year term; George Henry Payne of New York, 2-year term, and Hampson Gary of Texas, one-year term.

The new Federal Communications Commission, according to the New York *Times*, was set up under the authority of the Communications Act, adopted during the closing days of the last session of Congress. The purpose of the commission is to regulate the nation's interstate and foreign communications services by telegraph, telephone, cable, and radio.

Its most immediate effect was to abolish the Federal Radio Commission and transfer all its powers and functions to the new commission. It further transferred from the Interstate Commerce Commission all of the authority vested in that body over telephone and telegraph. It repealed and reënacted with modernizing revisions the provisions of law relating to these two former periods of regulating interstate and foreign communications.

The authority of the commission became effective July 1st, under the terms of the act. An outstanding provision of the new law is that it empowers the President in time of war to take over all radio and wire communications facilities in the interest of national defense.

Investigation of telegraph, telephone, and cable rates will be one of the commission's first acts, Chairman Sykes revealed soon after his appointment, according to *Universal Service*.

The purpose is to lay a groundwork looking to reduction in communication charges. It is known President Roosevelt is anxious to have the communications commission go into this phase.

Mosher Heads Rate Survey

APPOINTMENT of Dr. William E. Mosher to head the electric rate survey, recently authorized by Congress, has been announced by Frank R. McNinch, chairman of the Federal Power Commission, according to *The Wall Street Journal*.

Dr. Mosher is at present director of the school of citizenship and public affairs at Syracuse University and is joint author of several works on utility regulation, among which are "Electrical Utilities, the Crisis in Public Control," published in 1929, and "Public Utility Regulation," published in 1933. He also has written the section on "Utility Regulation" in the official history of New York state, now on the press.

Dr. Mosher has had practical experience in several governmental inquiries. He was associated with the bureau of municipal research, New York, from 1918 to 1924; was a special agent of the Department of Labor in 1918; and was director of research of the joint commission on reclassification of salaries, made by the Post Office in 1921. From 1922 to 1924 he was a member of the New York legislative commission on taxation and retrenchment, and during 1929–30 he served as director of research of the joint legislative commission investigating the public service commission laws of New York state under Governor Franklin D. Roosevelt.

Senators Wagner and Copeland approved Dr. Mosher's appointment.

Securities Control Body Named

THE personnel of the Securities and Exchange Commission created to regulate the stock exchanges under the sweeping Stock Exchange Control Act passed by the last Congress was announced by President Roosevelt June 30th as follows:

Joseph P. Kennedy, chairman, of New York, 5-year term; George C. Mathews of Wisconsin, 4-year term; James M. Landis of Massachusetts, 3-year term; Robert E. Healy of Vermont, 2-year term, and Ferdinand Pecora of New York, one-year term.

Messrs. Mathews and Landis are members of the Federal Trade Commission. Mr. Pecora was counsel for the Senate Banking and Currency Committee during the period in which it aired publicly for the first time in twenty years the manifold operations of securities exchanges and investment banking houses. As committee counsel he played a large part in shaping the law under which the commission will operate, according to the New York *Times*.

FTC Acting Counsel Named

WILLIAM T. Kelly, on the legal staff of the Federal Trade Commission since 1914, recently was named acting chief counsel, succeeding Robert E. Healy, now a member of the Securities and Exchange Commission, according to a statement in *The Wall Street Journal*.

Mr. Kelly has been assistant chief counsel since 1925 and is an authority on antitrust laws.

Alabama

13 Towns Offered TVA Rate in Four-point Program

DAVID E. Lilienthal, director in charge of power of the Tennessee Valley Authority has announced a four-point program whereby 13 north Alabama municipalities may secure reduced rates immediately, according to the *United Press*.

The plan involves purchase of existing facilities of the Alabama Power Company and resale, on long and convenient terms, to the municipalities—Decatur, Russellville, Courtland, Falkville, Hartsell, Moulton, Red Bay, Town Creek, Cherokee, Leighton, Tuscumbia, Sheffield, and Florence.

The four-point plan follows:

1. TVA purchase of distribution systems, rehabilitation of them, and additions of rural lines.

2. Operation of the systems for a limited period by TVA, which would sell cheap Muscle Shoals power to consumers.

3. TVA will transfer systems to municipalities when they are in position to take them over . . . municipalities to pay for them from surplus earnings, without necessity of making cash outlay or pledging credit . . . until paid for rates be regular TVA rates, plus 10 per cent surcharge for paying for systems (in ten years).

4. Intensive program of domestic, industrial, and commercial load building, utilizing TVA facilities, making available low-price electrical appliances to consumers on long-term financing plan.

Decatur, Russellville, Sheffield, and Tuscumbia promptly announced they would accept the proposal for the TVA to purchase existing systems from the Alabama Power Company, and immediately begin retailing power at regular TVA rates, plus 10 per cent, according to the Atlanta *Constitution*.

Florence city officials indicated they would not approve the plan, since that municipality already has made arrangements to build a distribution system of its own for the sale of TVA power.

TVA Permit Upheld by PSC

THE state public service commission on July 7th declined to rescind its order of May 30th, which permitted the Tennessee Valley Authority to acquire lands and distribution lines of the Alabama Power Company, according to the *United Press*.

Ice and coal dealers protested that functions of the TVA would cripple their business.

City Power Plant Rejected

A $216,000 application to the Public Works Administration to construct a municipal electric light plant at Andalusia has been disapproved, according to the Knoxville *Journal*.

The project is not an "urgent necessity" and revenues expected would not warrant the expense, Dr. George J. Davis, engineer-inspector of the PWA, said, adding that the municipal bond securities offered were insufficient.

Arkansas

Lower Rates for Little Rock

A REDUCTION of 10 per cent in electric rates charged to residential and commercial consumers in nearly fifty cities of Arkansas was announced recently by the Southwestern Gas & Electric Co. through the Arkansas Fact Finding Tribunal.

The reduction followed similar announcements recently by the Arkansas Power & Light Co. and the Oklahoma Gas & Electric Co., which serves Fort Smith, Ark., bringing to nearly $300,000 a year, as estimated by P. A. Lasley, tribunal chairman, the savings to consumers through action of the three companies.

Approves Taxicab Levy

FOLLOWING oral arguments in Pulaski chancery court, Chancellor Dodge sustained § 31 of the refunding act, which fixed special license fees for taxicabs, and said he will sign a decree to be prepared which will dismiss the suit of taxicab operators to prohibit collection of the tax, according to the Arkansas *Gazette*.

Suit was filed several months ago by Little Rock cab companies to restrain Commissioner of Revenues Earl R. Wiseman from collecting the increased tax, and cab companies in other cities were permitted to become party plaintiffs. Collection of the tax was deferred pending trial of the suit.

Section 3 places a flat tax on taxicabs, based on the engine horsepower and the weight of the cabs. The cab companies contended that the licenses were unconstitutional because they were confiscatory, and that the cabs were operated only on city streets and not on state highways.

The decision probably will be appealed to the Arkansas Supreme Court.

Augusta Reduces Rates

THE Augusta light and water plant reduced electricity rates, effective July 1st, according to the Arkansas *Gazette*.

The rates have been reduced from 12 cents per kilowatt to 10 cents; power from 7 to 5 cents; heat from 4 cents to 3 cents. Customers who pay their bills by the 10th of each month, will be given an additional reduction of 10 per cent.

Connecticut

New England Commissioners Meet at Hartford

THE trend of the recent United States Supreme Court decisions in utilities cases is to restore the wide discretion of public utilities commissions in determining reasonable rates, Attorney John L. Collins, counsel for the Connecticut Public Utilities Commission, told the annual meeting of the New England Association of Utilities Commissioners. Commissioners from each of the New England states attended the recent meeting in Hartford, according to the Hartford *Courant*.

Chairman Stephen S. Cushing of the Vermont Public Utilities Commission was named president of the association for the coming year, and the next annual meeting will be held at Montpelier, Vermont.

Mr. Collins pointed out that the United States Supreme Court, in its recent decisions, has adopted a practice of looking through the form of a commission's order to the substance and sustaining it, if an examination and the weighing of the entire order shows no substantial injustice has been done to the utility company. He discussed some of the more important decisions in detail to illustrate the trend in specific matters. He showed that the rate of return allowed utilities companies by commissions and courts has dropped from a post-war level of between 7½ and 8 per cent to 6½ per cent in 1933, and forecast the upholding of a return to the old pre-war 6 per cent basis if the present trend is continued.

Discussions at the meeting were led by Commissioners Albert J. Stearns of Maine, Stephen S. Cushing of Vermont, and Nelson Lee Smith of New Hampshire, following which members of the commission's staff presented papers.

Georgia

Orders Lower Power Rates

IN the face of injunctions, subpœnas, and threatened contempt proceedings, the public service commission recently ordered the Georgia Power & Light Company to reduce its annual charges approximately $80,463 per year, according to the Atlanta *Constitution*.

Only a short while after he had been served with a subpœna to appear as a witness in Federal court July 5th in the injunction hearing sought against the commission's rate cuts by 10 small telephone companies, Jud P. Wilhoit, chairman of the commission, issued the new electric rate cut order.

The Georgia Power & Light Company serves a number of south Georgia communities, with headquarters at Valdosta. Several months ago the commission ordered the company to reduce its rates but the company obtained a Federal court order restraining the commission from putting the order into effect.

As it had done in the cases of the 10 tele-

phone companies, the public service commission then withdrew the previous orders and held a series of new hearings, at which the power and light company declined to present additional evidence.

The reduction affects 30 cities and towns in south Georgia, those with populations of more than 1,000 being: Bainbridge, Blackshear, Boston, Donalsonville, Jesup, Valdosta, Lakeland, Homerville, and Waycross.

Roads Oppose Rate Order

CITED by the public service commission to show cause why freight rates should not be reduced, the state's leading railroads recently answered by charging that rates already are too low and countering with the assertion that they should be increased instead of reduced, according to the Atlanta *Constitution*.

The commission was entering upon its second railroad freight investigation of the year. The first investigation, held last winter, resulted in an order reducing class and commodity rates 27 per cent, an order which was set aside and enjoined by the Federal courts which held that it ordered confiscatory rates into effect. When the present hearing was set, the carriers sought to have the courts enjoin it, but their plea was rejected. At that time the court pointed out that it had restrained the 27 per cent cut and that under the injunction order no cut of approximately 27 per cent could be meted out by the commissions.

Illinois

Cites Illinois Bell

THE commerce commission has cited the Illinois Bell Telephone Company to show cause why its rates for all classes of service should not be reduced in its entire Illinois territory. Preliminary proceedings in this case were scheduled to start July 26th, according to an item in *The Wall Street Journal*.

"The investigation," said Chairman B. F. Lindheimer, "will cover not only rates in Chicago, but all Illinois Bell's operations in the entire state."

Indiana

Fight Municipal Utility Tax

BEDFORD is taking the lead in the fight of 40 other cities against the Indiana law which provides that all cities must pay state and county taxes on municipally owned utilities.

Appeal has been made to the state board of tax commissioners. If the appeal is denied, the cities, which are affiliated with the Indiana Municipal League, plan to carry their fight to the courts to test the constitutionality of the act, passed in 1933.

Kansas

Sets Gas Rate Hearing

HEARINGS to determine Cities Service Gas Company pipe-line valuations and gas rates will be held September 17th under an agreement reached by the corporation commission and attorneys for the utility, according to a statement published in the Topeka *State Journal*.

The commission plans to proceed with hearings into consumer rates charged by Cities Service distributing plants at Baldwin, Madison, and Topeka, in the order named, following a hearing on pipe-line valuations.

Louisiana

House Approves Utility Tax

ACTING under the direction of Senator Huey P. Long, the House Ways and Means Committee has reported favorably a tax reform commission bill to levy a tax of 2 per cent on the gross receipts of public utilities, according to the *Times-Picayune*.

Senator Long had the public utilities tax bill amended to exempt street cars and motor busses operating within municipalities and exempting from the payment of the new tax those paying the electric power tax levied by the legislature in 1932.

The Morvant bill, paying debts of the public service commission and back salaries of members of the commission, was passed by the house by a vote of 77 to 2.

One of the bills introduced in the senate to place contract and commodity truck carriers under the jurisdiction of the public service commission was defeated by the senate, but notice of reconsideration was given. The other bill was returned to the calendar.

Michigan

Court Upholds Clardy Ouster

THE supreme court recently upheld the action of Governor William A. Comstock in removing Kit F. Clardy from the public utilities commission, according to the Detroit *News*.

Clardy was ousted from the commission in February, along with Edward T. Fitzgerald, of Detroit, and Harry C. McClure, of Flint, following a hearing before the governor in which they were charged with gross neglect of duty. Clardy refused to present a defense at the hearing on the ground that he had not been given proper notice and would not be permitted an opportunity to present proper proof of his innocence. He sought a writ of *quo warranto* from the supreme court to force a rehearing of the case.

His request for a writ was based principally on a section of the old act creating the Michigan Railroad Commission, which stated that members of the commission were entitled to ten days' notice of charges lodged against them before being required to appear for a hearing on the charges.

The court decided the section of the Michigan Public Utilities Act with the customary phrase transferring "all rights, powers, and duties" to the new commission did not include that section of the old act requiring the ten days' notice in event of removal.

Company Plans Appeal

INITIAL steps have been taken for an appeal to the United States Supreme Court of the decision returned recently by the United States Circuit Court of Appeals at Cincinnati, restraining Consumers Power Company from interfering with the city of Allegan in issuing $649,000 in bonds for a municipal dam and lighting plant.

In announcing the intention to appeal, company officials, according to the Detroit *News*, said that its legal department had already filed a motion to carry the case to the higher court.

The circuit court of appeals set aside a temporary injunction issued by Federal Judge Fred M. Raymond of Grand Rapids, restraining the city from completing the proposed bonding program.

The gas rate question is back with the city commission following a report by a special committee that the Consumers Power Company has rejected a proposal for a new rate schedule which would have meant a saving of $36,000 a year to gas users in Jackson.

Nebraska

Omaha Gas Rate Reduced

A REDUCTION of 5 cents per thousand cubic feet for all consumers who use more than 500 cubic feet and up to 10,000 cubic feet of manufactured gas was ordered recently by the Omaha metropolitan utilities district, according to the Nebraska *State Journal*. No change is being made in the rate for the first 500 cubic feet, but for the next 9,500 cubic feet the rate will be 55 cents per thousand cubic feet. No change is being made in the rate for more than 10,000 cubic feet.

The reduction is warranted, it was announced, by increased earnings due to greater consumption and to a lesser degree by the saving of $100,000 a year guaranteed by the Northern Gas & Pipe Company when natural gas is substituted for oil in the manufacture of gas.

Commission Reduced Taxicabs

ANNOUNCEMENT of the railway commission's rules for Omaha taxicabs, and its allocation of permits recently, brought a threat of rebellion by the Omaha city council through cancellation of street privileges of allegedly favored companies, according to the Lincoln *State Journal*.

The commission, authorized 135 taxis for Omaha, instead of the 200 asked by the Omaha council.

The commission went on record as favoring protecting the street railway company from cheap taxicab service, but does not at this time care to take up the matter of fixing minimum fares for cab service. It believes that with the number of cabs restricted the fare question will right itself.

New Jersey

Rate Cut Dies in Legislature; Camden Loan Delayed

THWARTED by majority leader Prall, the Democratic minority in the senate failed to have the recent legislature pass the Richards measure permitting the public utility commission to fix temporary gas and electric rates, according to the Newark *Evening News*.

The attempt followed a protracted debate started by Senator Stout, Democrat of Hudson, who attacked the Republicans for failure to vote utility rate legislation, taxation relief, and bond and budget measures.

The adoption of a Prall resolution adjourning the legislature until December 17th prompted Senator Stout's attack.

Senator Woodruff of Camden failed to have adopted three measures recommended by Secretary Ickes of the Department of the Interior, which were designed to assist Camden in construction of a municipal electric lighting plant.

Had the measures passed Camden would have obtained $6,000,000 from the Federal government, 30 per cent of which would have been a gift and 70 per cent a loan. Public Service Corporation of New Jersey is testing in the supreme court a Camden referendum authorizing the municipal plant.

Mr. Ickes had said if the present session of the legislature failed to pass the necessary measures, he would withdraw the funds and allot them elsewhere, according to *The Wall Street Journal*.

The city proposes to build a 17,500-kilowatt steam electric power plant, substations, and distribution and street-lighting systems.

Voters of the city approved the project last November by a vote of 23,000 to 9,000.

Utility Seeks 8 Per Cent Return

THE Public Service Corporation of New Jersey should be allowed a return of "at least 8 per cent upon a proper valuation," Thomas N. McCarter, president, said at a hearing on rate reduction before the board of public utility commissioners, according to *The Wall Street Journal*. Mr. McCarter, who is also president of the Edison Electric Institute, was the first witness for the corporation. The hearings began more than ten months ago.

"Radicals and politicians are seeking to reduce residential rates because in this way they can appeal to a larger number of voters," Mr. McCarter said. He threatened a reduction in common stock dividends or wages, or both, if the proposed rate reductions are put in effect.

Mr. McCarter said there are 690,000 domestic consumers of electricity in the state who pay an average of $2.80 per month. He added that since 1922 the corporation has made rate reductions totaling $9,210,771.

New York

Mack Heads Utility Probe

JOHN E. Mack, of Poughkeepsie, who started Franklin D. Roosevelt in politics and placed his name before the Democratic National Convention in 1932, was chosen recently as counsel to the general investigation of public utility companies, their political and business practices, which was authorized last spring by the state legislature.

Mr. Mack, according to the New York *Herald Tribune*, expects by late September or October to be ready to hold public hearings. By February, when the present legislative committee's authority expires, he hopes to have completed one or two of the subjects within the vast scope of the investigation order under pressure from Governor Herbert H. Lehman and W. Kingsland Macy, Republican state chairman. It has been considered probable that the investigation would consume years. The immediate prospect is that its first revelations will start popping when the state election campaign is at its height.

Upholds Bus Franchise

SUBSTITUTION of bus lines for many of the surface car lines of Manhattan appeared likely when Justice Philip J. McCook of the supreme court recently upheld the validity of 25-year bus franchises to five bus companies on December 22, 1933, one of the last acts of the board of estimate in the O'Brien administration.

The decision of Justice McCook was rendered in dismissing the taxpayer's suit brought by Mrs. Sadye Greenberg, wife of M. Bernard Greenberg, counsel for the Green Bus Lines, Inc., a losing contender for a franchise.

The suit to revoke the franchises was brought on the ground that the board of estimate had failed to make a proper inquiry into their monetary value, and that fraud and collusion had been used.

Urges Wide Taxi Reforms

URGING drastic and prompt revisions "in the law and regulations governing the taxicab industry" to correct the present "unsound, serious, and intolerable" conditions in that industry, the mayor's committee on taxicab survey of New York city, headed by Aldermanic President Bernard S. Deutsch, recently made public the report on which it has worked for five months.

The committee, according to the New York *Times*, found the industry "thoroughly unsound in organization and operation," with "too many cabs and too many licensed drivers."

Instead of recommending the setting of an arbitrary limit on the number of cabs the committee advised—though not unanimously—that the principle of so-called "economic limitation" be adopted.

North Carolina

Opposes PWA Loan

THE Duke endowment recently initiated a public campaign for revocation by the Public Works Administration of a $2,767,000 loan to Greenwood county for a municipal power plant that would compete with the Duke Power Company, according to the Raleigh *News & Observer*.

Dr. W. S. Rankin made public a memorandum addressed to beneficiaries of the organization founded in 1924 by the late tobacco multimillionaire, James B. Duke.

"The Federal government," it said, "is pursuing policies which, unless abandoned, will seriously cripple, if not destroy, the Duke Power Company."

The endowment largely relies on that company, Dr. Rankin explained, for funds distributed annually in North and South Carolina to various hospitals, orphanages, and churches as well as Duke University, Davidson, Johnson, Smith, and Furman colleges.

It was revealed that Senator Bailey and Representatives Doughton and Bulwinkle of North Carolina had interceded with the administration to get reconsideration of the loan, when the hearing was granted; identity of the objecting organization was not made public.

Taxicab Ordinance Unlawful

THE proposed taxi ordinance, requiring Durham taxicabs to carry liability insurance, was termed unlawful by Judge N. A. Sinclair who produced a number of supreme court decisions handed down last week to substantiate his statements, according to the Raleigh *News & Observer*.

The Durham taxi case is identical with that in Charlotte where an ordinance was recently passed requiring taxi concerns to carry liability insurance, the Fayetteville jurist said. The Charlotte dime taxi companies continued to operate in spite of the law.

The proposed taxi insurance ordinance, temporarily shelved by the Durham city council, provides that all taxi companies carry liability insurance or present liability statements showing their ability to satisfy judgments in damage suits.

Power Utility Reduces Rates

ANOTHER reduction in public utility rates was announced by Corporation Commissioner Stanley Winborne recently, according to the Raleigh *News & Observer*. The reduction, placed in effect on July 1st by the Virginia Electric and Power Company, will save North Carolina customers about $75,000 a year.

The company serves a considerable area in northeastern North Carolina, doing there about 8 per cent of its total business. Headquarters are at Roanoke Rapids.

The Virginia Company voluntarily reduced its rates two years ago and because of that was not included with other major companies who reduced rates under agreement with the old corporation commission in December, 1932.

North Dakota

Probe Includes Phone Rates

AN amended complaint of the Minot city council regarding investigation of telephone rates of the Northern States Power Company was filed recently with the railroad commission, according to the Bismarck *Tribune*.

Previously the commission was conducting an investigation into the steam-heat and electric rates of the company as the result of a request of its patrons for rate reduction. The amended complaint of the city council brings the telephone company, which is also operated by the power company, into the investigation.

Ohio

New Rate Contract Protects Utility Company

THE Union Gas & Electric Company is to be protected against inflation or increased costs under a new rate contract to be entered into with the city under a special ordinance, according to *The Wall Street Journal*. The contract will provide for an adjustment of rates at any time to compensate for the imposition of additional taxes or other costs.

Recently officials of the city and of the company, which is a Columbia Gas & Electric Corporation subsidiary, agreed tentatively on the broad outline of the method of reducing rates.

The ordinance when officially adopted by the city council will be effective from August 17th, through 1937, and is retroactive to October 18, 1933.

Outcome of the current negotiations may have a far-reaching effect on future utility rate structures in all parts of the country, in that it may supply a way out of a dilemma now perplexing utility managements. Protection against increased fuel costs has been in effect for many years in various parts of the country, but such a wide protection clause as is proposed by the Cincinnati agreement would be a new accomplishment for the industry.

The new ordinance would save consumers around $9,000,000 during the four years of its life; with about $2,000,000 for 1934, $2,166,167 for 1935, $2,333,333 for 1936 and $2,500,000 for 1937. A reduction of $245,000 a year in the city's street lighting contract and a refund of around $1,200,000 to individual consumers is also involved.

Offer New Gas Rate

NEW natural gas rates have been offered the city of Garfield Heights by the East Ohio Gas Company in an effort to end the 2-year controversy between company and suburb which now is before the public utilities commission, according to the Cleveland *Plain Dealer*.

The rates are those offered Cleveland Heights and other suburbs, Mayor Martin L. O'Donnell said, and, in addition, the company agrees, if the new rates are accepted, to rebate to the suburb's consumers the difference between the new rates and the old franchise rates which the consumers have been paying pending disposition of their case by the commission. The company further offers to give Garfield Heights the same rates Cleveland receives from the commission if such rates are lower than those now offered the suburb by the company, the mayor added.

A proffered reduction in street lighting rates by the Cleveland Electric Illuminating Company was accepted by the council, which authorized Service Director Leonard Capinski to alter the present contract to permit the new rates to become operative as of June 1st. It is estimated the reduction will save the city $3,000 a year.

Ohio Bell Refund Delayed

THE public utilities commission has set $12,167,678 as the exact amount which the Ohio Bell Telephone Company must return to its clients throughout the state, according to the Columbus *Evening Dispatch* which stated that $2,429,916 of the total refund is due Columbus phone subscribers.

The utilities commission will not make the refund order final and effective until after a hearing on August 1st, but even such action is not expected to bring about the immediate repayment of moneys since the telephone company has already carried its evaluation case to the supreme court to be heard during the fall term of court.

Tennessee

Utility Answers Petition

OPPOSING the petition of the city of Chattanooga for a reduction in electricity rates, the Tennessee Electric Power Company has filed an answer with the railroad and public utilities commission saying that "it has never made an excessive or unfair return on the fair value of its property."

The answer, according to the Nashville *Banner*, cited the uniform electricity rate charged throughout the territory of the company, and made the following statement:

"Any departure from this established principle of uniform rates which would be to the advantage of the city of Chattanooga must of necessity be to the disadvantage of the other and smaller towns and communities served by the defendant."

The answer said that "during the years of the depression, the return earned by the defendant on the value of its property steadily declined, and taxes imposed upon it have at the same time steadily increased."

Texas

Waco Orders Lower Gas Rate

VOTING 4 to 1, Waco's city commission recently passed an ordinance reducing the gas rate in Waco to domestic consumers approximately 15 per cent. It becomes effective immediately, according to the Dallas *Morning News*.

The Texas Cities Gas Company will appeal, it was said, to the railroad commission to suspend the rate, pending a hearing. If this be refused, application will be filed in the Federal court to enjoin the enforcement of the ordinance. In this connection the company must contend with the recently enacted Johnson bill, which provides that rate cases must first be tried in the various state courts before the aid of the Federal courts is invoked.

There is pending before the railroad commission an ordinance reducing the light rates 25 per cent.

Utah

Considers Glen Canyon Project

UTAH has been asked to join with Arizona in the development of a $100,000,000 water-power and storage project in Glen canyon on the Colorado river just above Lee's Ferry, according to the Deseret *News*.

Attention has been called to recent press dispatches stating that President Roosevelt has approved the use of $100,000,000 in PWA funds to build the Glen canyon dam just south of the Utah border, and it has been pointed out that this project in connection with the Highline development in Arizona would form a lake 180 miles long, most of which would be in Utah.

West Virginia

Preston New PSC Chairman

GOVERNOR Kump has designated John J. D. Preston chairman of the public service commission, according to the Charleston *Gazette*. C. E. Nethken, one of the three members of the commission has been acting chairman since the retirement of I. Wade Coffman June 1, 1933.

Preston was appointed to the commission by Governor Kump and confirmed by the senate June 3. 1933. He assumes the chairmanship at a time when the commission is making heretofore unheard of strides in activity. A general survey of utility rate bases to be used in future fixing of rates has recently been started. The late session of the legislature appropriated $90,000 a year for this year and next to be used in the work. A large staff of engineers and accountants has been added to the personnel, including J. Donald Murray, formerly valuation expert of the public utilities commission of the District of Columbia, who has been appointed chief valuation accountant.

The public service commission recently "invited" utility corporations to make "voluntary reductions" in their rates to the public.

The Latest Utility Rulings

State Commission Authority to Examine Interstate Supply

THE supreme court of Kansas has held that certain local distributing companies engaged in the business of furnishing to their consumers a natural gas supply received from affiliated pipeline companies at the city gate are subject to the Kansas Corporation Commission's authority to inquire into the reasonableness of the city gate charge, even though the business of the pipeline companies may be interstate. The court pointed out that under such circumstances, where many distributing companies obtained gas from affiliated pipe-line companies, it was proper for the commission to consider the factors of the city gate charge that are common to all distributing companies in the course of one proceeding brought for that purpose, provided that all interested companies are given notice of the investigation and an opportunity to be heard.

It was also held that a commission finding as to what constitutes a reasonable city gate charge is a preliminary order only and not binding until it becomes an element in the rate of the ultimate consumer.

An interesting angle which developed during the course of this proceeding was the fact that the old Kansas Public Service Commission charged with the jurisdiction to fix rates for utilities had conducted the original hearings. Pending litigation as to the validity of its preliminary order making a finding on the reasonableness of the city gate charge, the Kansas Public Service Commission was abolished and the new Kansas Corporation Commission was created, with the same power, authority, and jurisdiction as the old commission. The court held that the new commission had ample authority to carry on the proceedings commenced pursuant to orders issued by the former commission, and that the enforcement of the original order was improperly restrained.

The terms of the commission order provided for an investigation of the reasonableness of the city gate charge and were deemed by the court broad enough to confer jurisdiction on the commission to consider the city gate charge as an element in the consumers' rates. The court pointed out, however, that once a consumer's rate is fixed by a regulatory board, the utility has a right to test the reasonableness of the rates in court and, in such proceedings, the court may properly consider every element which went to make up the consumer's rate.

It was also held that where a commission subsequently conducted an investigation for the purpose of fixing the reasonableness of a consumer's rate, it is proper for the commission to consider the record of proceedings commenced by a predecessor commission together with whatever evidence of changed conditions is necessary to bring the record to date. In addition, it was held proper for the new commission to consider whatever elements are peculiar to any particular distributing company and to apply its own independent judgment based on such factors in determining a reasonable rate.

In conclusion the court ruled that where utility companies have brought suit in the state district court to enjoin the enforcement of the commission rate order, the commission is justified in bringing a mandamus action against the companies under state laws (R. S. 66–181, 66–182) without waiting thirty days from the date of its own order. *State ex rel. Steiger et al. v. Capital Gas & Electric Co. et al.*

Statewide Rate Resulting in Individual Loss Voided

THE Oklahoma Supreme Court has vacated an order of the Oklahoma Corporation Commission fixing rates for cotton ginning on a statewide basis, as the result of a suit by a cotton-ginning association in which it was shown that the rates resulted in unprofitable operation for the plaintiff.

The commission order purported to fix rates to be charged for all persons, corporations, and concerns engaged in the ginning of seed cotton as a business and operating cotton gins within the state of Oklahoma for the ginning season of 1933–1934, effective September 5, 1933. In support of the statewide rate, the commission pointed out that one of the most perplexing problems for the establishment of cotton-gin rates is the determination of a proper basis to be used in establishing such rates. In an effort to avoid discrimination and dissatisfaction resulting from discrepancies between various local rates, the commission decided to use the state as a unit for its rate making. The commission also pointed out that it had not been furnished with sufficient assistance to compute rates properly.

The court held that where it was shown that the statewide rate resulted in inadequate revenue for certain portions of the state, the rate could not stand as to operators functioning unprofitably. The court ruled that no rate is satisfactory to a gin which is required to operate without a reasonable return on its investment. It was observed that the rates fixed resulted in depriving the plaintiff gin operator of valuable rights, regardless of the problem confronting the corporation commission and regardless of the fact that the latter was not furnished with sufficient assistance to compute rates properly. The cause was remanded for further action. *Oklahoma Cotton Ginners Association v. Walker et al.*

Increased Rates to Offset Local Taxes Vacated

BACK in 1909 the town of Milo, Maine, entered into a contract with the Milo Water Company whereby the latter agreed to supply water to the municipality's forty hydrants in return for payment of $1,500 a year. Also under the contract (which was to run twenty years), the town agreed to pay "such further sums each year as shall equal the amount of tax, if any, assessed against said company by said town of Milo during said year."

In April, 1928, the town of Milo assessed the tax on the water company, whereupon the utility petitioned the Maine commission for an increase in rates to offset the additional operating cost. The commission entered an order directing the utility to charge $140 per hydrant instead of $60, the amount fixed by the commission in 1927, it being estimated that the difference would offset the tax assessment. In an action brought by the town against the company for payment of taxes, the court had previously held that the town was under no legal obligation to refrain from taxing the water utility (Milo *v.* Milo Water Co. 131 Me. 372.) In the case at bar it was the utility that sued in order to recover an amount claimed to be due for hydrant rental up to November, 1928.

The utility claimed that the order of the commission had been made in order to allow the utility increased revenue to offset tax payments which the commission had previously assumed could not be collected from the utility company. The court held that the company could recover only upon the assumption that that part of the contract providing for reimbursement by the town of taxes paid by the utility remained in force, notwithstanding the jurisdiction taken by the commission over such matter.

The court did not believe, however, that this part of the contract was in effect at the time the taxes were assessed in 1928. It pointed out that in view of the actions of the parties to the litigation, as well as of the state commission, during the preceding years, it was unreasonable to suppose that either the town of Milo or the Milo Water Company regarded provisions of the contract of 1909, fixing compensation of the utility, still in force. The court accordingly awarded judgment for the defendant town. *Milo Water Co. v. Inhabitants of Town of Milo.*

Toll Bridge Monopoly Not Sustained in Federal Court

THE much discussed dispute about the highway toll bridge over the Red river between Oklahoma and Texas, which at one time resulted in the Oklahoma militia and Texas rangers being called into service over a threatened "war" between the two states about two years ago, has been renewed in part by the United States Circuit Court of Appeals for the Tenth Circuit.

The case has an interesting background. In 1876 the Chickasaw tribe of Indians granted to one Colbert the right to construct a bridge over the Red river, which he in turn assigned to the Red River Bridge Company, a Texas corporation. Congress approved the operation of a toll bridge in 1886 and upon the faith of such franchise a bridge was constructed. More recently the states of Oklahoma and Texas determined to construct a free bridge across the river within less than two and a half miles of the toll bridge as part of a Federal aid interstate highway.

Land owned by the bridge company was needed as an approach on the Oklahoma side. The state instituted an action to condemn and acquire the land for that purpose. The jury passed upon the values of the land taken and an appeal was taken by the private toll bridge company. The court held that Congress in granting the private company's franchise did not intend to exclude the sovereign state of Oklahoma from constructing and operating a bridge. The court further held that the exclusive nature of the franchise in question did not affect the right of the state to construct and operate a bridge within the prescribed area of the river, and that the exercise of its prerogative to provide free transportation did not constitute the taking or destruction of private property for public use in the legal sense, although it was conceded that the value of the private company's bridge became less and that its business was rendered unprofitable.

Since, therefore, the state did not exceed the bounds of its authority, the court held it could not be liable for a diminution in the value of the toll bridge and franchise. The lower court judgment was accordingly reversed and the cause remanded for further proceedings. *State ex rel. King v. Handy.*

Rate Case Thrown Out of Federal Court under New Federal Johnson Law

APPARENTLY Florida wins the race among the states to be the first to compel a utility to go into state court appellate proceedings from state commission rate reductions as required by the so-called Johnson Law enacted by the recent session of Congress. A Federal 3-judge court denied an application

of the Peninsula Telephone Company for an interlocutory injunction restraining the Florida commission from enforcing rate-cut orders. The Johnson Bill was given as one of the reasons for the Federal court action. The original bill, which was filed in December, 1933, according to Federal Judge Nathan P. Bryan, was not effective because the Johnson Bill was not retroactive, but it was indicated that the Johnson law did affect the filing of supplemental bills.

The telephone company entered the state circuit court of Tallahassee, which was the only course left open by the Johnson law. *Re Peninsula Telephone Co.*

South Carolina Commission Encourages Rural Electrification

ANOTHER step toward rural electrification in South Carolina has been taken by the railroad commission's allowing the Abbeville Power Company to extend two rural lines along the Antreville-Anderson highway. Commenting on the order of the commission, Thomas H. Tatum, chairman, said:

> In this day of demand for extension of rural electric lines it would be an unwise policy for the commission to refuse a certificate of convenience and necessity to a power company to extend its lines into a territory not already served by another power company unless the expenditures required would be so grossly unprofitable as to amount almost to waste of the assets of the power company making such application.

The order recited that the Southern Public Utilities Company, "while stating it was ready and willing to furnish service in all cases where the revenue warranted it, fell short of saying that it was ready to furnish the particular service upon these particular lines." The Southern Public Utilities Company had opposed the application. *Re Abbeville Power Co.*

Discontinuance of Service for Defective Wiring Sustained

FOR some time Mr. Sides, an Alabama citizen, had been receiving electric service in a house which he determined to tear down upon completion of a more permanent residence. When the new house was completed, Sides left standing the posts of the old house on which the electric meter and switch were fastened. They stood about ten feet away from the new house and he extended a wire from them across his lot and into his house, using what is termed an inside drop twisted wire cord. The new house had no wiring system but this long cord was moved about with a bulb on the end for lights. The inspectors of the Alabama Power Company regarded this cord as unsuitable for outside use, since it was liable to leak as a result of being exposed to the weather and to cause injury to persons coming in contact with it, or to set the house on fire.

The company notified Mr. Sides to correct the defective wiring condition and its employees proposed to supply the necessary material and to lend him enough money to pay the cost of making the change. Mr. Sides refused to do so; whereupon the company discontinued service. Mr. Sides sued the company for damages resulting from service discontinuance and a lower court jury awarded him a verdict. On appeal the Alabama Supreme Court reversed the lower court judgment holding that the trial court had erred in submitting to the jury the question of whether or not Mr. Sides' wiring was dangerous. The superior court held that there should have been an affirmative charge for the defendant com-